

Recommendations-Key Topics for Proposed Legislative Changes



Topic	Current Matrimonial Property Act	Potential change A new Family Property Act	Why this change?
<p>Common law relationships</p>	<p>Only married spouses and registered domestic partners have family property rights. Generally, a couple's property is divided equally between them. The couple's property may not be divided equally if</p> <ul style="list-style-type: none"> • both people agree to that OR • a court finds it would be unfair to divide the property equally 	<p>Common-law couples would have the same family property rights as married couples and registered domestic partnerships. That is, a common-law couple's property would generally be divided equally between them if they separate. The couple's property may not be divided equally if</p> <ul style="list-style-type: none"> • both people agree to that OR • a court finds it would be unfair to divide the property equally <p>The law would define a common-law couple as a couple who has lived together in a relationship continuously for at least 2 years.</p> <p>Common-law couples who don't want to be subject to the proposed law can make a cohabitation agreement.</p>	<p>When common-law couples separate, they risk losing their economic stability just like married couples do. They need a way to divide their property fairly.</p> <p>Many common-law couples don't know that the law treats them differently from married couples when it comes to dividing their property.</p> <p>The proposed law would apply to common-law couples after they have lived together for 2 years. This will give the couples time to decide if they want to</p> <ul style="list-style-type: none"> • accept the legal obligations under the proposed law OR • opt out by making a cohabitation agreement <p>This 2-year rule is consistent with the laws in Saskatchewan, British Columbia, Nunavut, and Northwest Territories.</p>

<p>When a claim can be started</p>	<p>A married person can start a legal proceeding to divide property when</p> <ul style="list-style-type: none"> • one of the spouses files a petition for divorce • one of the spouses files an application for a declaration of nullity • the spouses have been living apart with no reasonable prospect of getting back together • one of the spouses has died. In this case they must start legal action within 6 months after probate or the court of probate grants administration of the estate. This deadline may be extended in some cases. <p>The Matrimonial Property Act does not recognize “former spouses”, that is, those who are already divorced. Property is divided as part of divorce proceedings and before the divorce is final.</p> <p>A registered domestic partner has the same rights as a married spouse.</p>	<p>Common-law partners, registered domestic partners, and former domestic partners would have up to 2 years from the day they separated to start property division proceedings.</p> <p>Judges would be able to extend this time limit where necessary. For example, if a person had to delay starting their property division proceedings for reasons beyond their control.</p> <p>We are also considering whether married couples should continue to have up until they divorce to divide their property as they do now. The other main option is to have the same 2-year time limit as common-law couples and registered domestic partnerships would have under the proposed law. If the 2-year time limit did apply to married couples, the court would be able to extend this time limit.</p> <p>For all couples, this limit would apply unless one of the following states differently:</p> <ul style="list-style-type: none"> • a court order • a domestic contract • a written agreement 	<p>These time limits give people time to be ready to start a court proceeding to divide their property. They are also consistent with the general limitation period set out in the Limitation of Actions Act.</p> <p>We can prevent people from starting multiple proceedings to divide property accumulated in the same period of time by</p> <ul style="list-style-type: none"> • requiring that they start a court proceeding to divide their property within 2 years of separating • defining a common-law relationship as a couple who has lived together for at least 2 years <p>Applying the same time limit to registered domestic partners, former domestic partners, and common-law couples makes things clearer for all non-married couples.</p> <p>In British Columbia, the 2-year time limit applies to married spouses. It begins on the day the couple divorced or their union was declared null.</p>
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<p>Property owned by one person before the relationship began</p>	<p>A person who owned property before the marriage or registered domestic partnership is generally required to share it when the relationship ends.</p>	<p>A person who owned property before the couple began living together would generally be allowed to keep it when the relationship ends. This applies to married couples, registered domestic partnerships, and common-law couples.</p> <p>If the property value increased during the relationship, only that increase would be shared.</p> <p>If the property value decreased, the couple would not have to share equally in the decrease.</p>	<p>In most Canadian provinces and territories, those who owned property before a relationship can keep it when the relationship ends.</p>
<p>Business assets</p>	<p>Business assets are generally excluded from property that is divided equally when a marriage or registered domestic partnership ends.</p>	<p>The person who owns the business asset would generally be required to share it equally with the other person when the relationship ends. Courts could order a spouse or partner to pay the other the value of half of the business asset. The asset itself would not be split.</p>	<p>Most Canadian provinces and territories include business assets among the family property to be divided equally. This change would recognize the contributions both people made to a relationship through work done inside and outside the home.</p>
<p>Rights to live in the family home</p>	<p>Spouses and registered domestic partners have equal rights to stay living in the family home no matter who owns the home. These equal rights end when one of these things happens:</p> <ul style="list-style-type: none"> • the couple divorces • a court order states that only one of the 2 people can stay in the home • a court order or separation agreement divides the property • one person in the couple dies 	<p>A person in a common-law relationship or a registered domestic partnership who does not own the home would have up to 2 years after separation to stay living in the home without a court order.</p> <p>As with married spouses currently, the other common-law or registered domestic partner who does not own the home would be able to ask the court for sole possession of the family home in some cases, For example, such a request may be made if leaving or sharing the home would put the safety of family members at risk.</p>	<p>Currently, there is nothing in the law that says how long someone in a common-law relationship can stay living in the family home. The proposed law needs to set a reasonable time limit for someone who does not own the family home to continue to live there after separation.</p>

<p>Family debt</p>	<p>The MPA does not mention family debt. Nova Scotia courts have decided that reasonable matrimonial debts should generally be divided equally. Matrimonial debt is debt taken on for these reasons:</p> <ul style="list-style-type: none"> • to finance ordinary household matters. This kind of debt is taken on during the relationship. • to meet basic living expenses or to keep matrimonial assets. This kind of debt may be taken on after the relationship ends. 	<p>Family debt would generally be divided equally when a couple separates. Family debt would include</p> <ol style="list-style-type: none"> 1) debt that was taken on during the relationship and remained at the time of separation AND this debt was <ol style="list-style-type: none"> a) in both people's names OR b) in one person's name but taken on for a family purpose 2) debt that was taken on after separation to keep or maintain family assets <p>With this new definition, no one would have to argue whether a debt was reasonable or not. They need only prove that both people took on the debt, or than one person took it on for a family purpose.</p>	<p>Today, many people bring debt into relationships and take it on during relationships. The proposed law must clearly state who is responsible for paying off the debt.</p> <p>The courts have already decided that family debt should generally be divided equally. The former Law Reform Commission's Final Report recommends against the requirement that the debt must be reasonable. It need only be for a family purpose. This suggested change follows that recommendation.</p>
<p>Pensions</p>	<p>Under Nova Scotia pension law a spouse or partner who is not the pension plan member is entitled to up to 50% of the part of the pension that was earned during the relationship.</p> <p>Courts have, on occasion, ordered that a spouse get more than 50% of the pension earned during the relationship. However, it is unclear if the pension plan administrator can do this. Instead, the pension plan member may have to use other assets to pay what the remaining part of the pension is worth.</p>	<p>The usual rule would continue to be that pension assets earned during the relationship would be split 50-50. But if a court ordered one person to get more than 50%, the pension plan administrator would be able to pay this amount. Further, the court could order that the spouse who is not the pension plan member should get part of the pension that was earned before the relationship. For example, if the spouse who is a member of the pension plan had gotten rid of other assets that should have been divided. In that case, the pension might be the only asset available to compensate the other spouse.</p>	<p>These changes would bring Nova Scotia's pension law in line with its family property division law. These changes would allow courts to offer better outcomes when one spouse's pension is the couple's only significant asset.</p> <p>The court should be able to order the pension plan administrator to pay the appropriate amount. It should also be clear that the pension plan administrators could pay the funds if so ordered.</p>