

Introduction

The Government of Nova Scotia would like to modernize the law that determines how family property is divided at the end of a relationship. To inform the process, the Government is looking for Nova Scotia residents' opinions, regardless of their relationship status or professional involvement in this area. This online survey should take 10-15 minutes to complete.

Please complete the survey no later than **February 20th, 2020**.

Although not necessary, you may wish to read background documents on the proposed changes, which are available on the consultation website, prior to completing the survey. These documents include the **Background Paper** and **Chart of Proposed Changes**, and **Final Report of the former Nova Scotia Law Reform Commission on the Division of Family Property** ("Final Report").

The survey is administered by Narrative Research Inc., a marketing research agency. All personal information you provide will be kept completely confidential and no personal identifying information will be asked. All survey responses will be presented in aggregate form only and any information will be disclosed in keeping with Nova Scotia's freedom of information laws. For more information on Narrative Research's Privacy Policy, contact Narrative Research.

Section A – Experience with Family Property Division

This section asks for information about you. It does not ask for any personal identifying information. You can skip any question you prefer not to answer.

1. Which of the following best describes your interest in the topic of family property division?
[Choose all that apply]
 - I have personal experience with family property division
 - I have a friend or relative who has experienced family property division
 - I have a personal interest in family property division, but no experience with it.
 - I have a professional interest in family property division

2. In what capacity do you have a professional interest in family property division?

- Lawyer
- Mediator
- Other (Please specify: _____)

3. Are you currently...?

- Single
- Married
- Registered domestic partnership
- Living together in a relationship for more than 1 year
- Other (Please specify: _____)
- Prefer not to say

4. Are you currently, or have you been in the past, in any of the following situations?

- Divorced
- Separation following a marriage
- Separation following a registered domestic partnership
- Separation following a long-term relationship that lasted at least 12 months
- None of these situations
- Prefer not to say

5. How long has it been since you were last divorced?

- Less than 1 year
- At least 1 year but less than 5 years
- At least 5 years but less than 10 years
- At least 10 years or longer
- Prefer not to say

6. How long have you been separated?

- Less than 1 year
- At least 1 year but less than 5 years
- At least 5 years but less than 10 years
- At least 10 years or longer
- Prefer not to say

7. Thinking of your most recent divorce or separation, how did you divide your family property and/or debts?

- By agreement without the help of a lawyer
- By agreement with the help of a lawyer
- By going to court for a court order
- Other (Please specify: ____)
- Prefer not to say

Section B – A New Family Property Act

The current legislation on family property division (The Matrimonial Property Act) was created 40 years ago. Over the past 40 years, society has changed and so have gender roles. The laws that courts apply must reflect current realities. The Department of Justice is considering new family property division legislation that would better meet the expectations of Nova Scotians.

Including common-law relationships

The MPA only applies to married couples and registered domestic partners. Most common-law couples do not register their relationships as registered domestic partnerships. This means that when they separate, it is not clear how they should divide their property. If they disagree on how to divide their property they must go to court and argue about concepts like “joint family venture”, unjust enrichment” or “constructive trust” – a complicated, less certain, and expensive process. It is proposed that common-law couples who have lived together for at least **two years** should be treated the same as married spouses and registered domestic partners under the new law – they would generally be entitled to divide family property equally when they separate. This also means that after two years of living together, a common-law partner would have rights to stay in the family home upon separation even if they are not an owner of the home. The amount of time a couple lives together before being considered a common-law couple under family property law varies slightly among the provinces and territories but ranges from one to three years.

It is proposed that common-law partners and registered domestic partners should have up to **two years after a separation to start a court proceeding** over the division of their property (unless they have an agreement made beforehand that says otherwise). This would help to ensure that if people enter into new common-law relationships during those first two years after separation, there won't be multiple claims for property division arising for the same period of time.

It is also being considered whether married couples should continue to have up until they divorce to divide their property. The other main option would be to apply the same two-year time limit as common-law couples and registered domestic partnerships would have under the new law (unless they have a prior agreement that says otherwise).

As part of a two-year time limit on any group, the proposal includes the court being able to extend this time limit: for example, if the delay in going to court was beyond the person's control.

8. Should family property laws in Nova Scotia apply to common-law couples in the same way as they do to married couples and registered domestic partners?

- Yes
- No
- Unsure
- Prefer not to say

9. Please explain your response.

10. Should the concept of “common-law partner” be defined under the proposed legislation as “a person who is living or has lived with another person continuously in a relationship for at least two years”?

- Yes
- No
- Unsure
- Prefer not to say

11. How should legislation define a common-law partner for the purposes of family property division?

- After one year of living together in a relationship
- After three years of living together in a relationship
- Other (Please specify: ___)
- Unsure

12. Should common-law partners and registered domestic partners who cannot agree on how to divide their property have up to a maximum of two years after they separate to start a property division proceeding in court (unless a court order or a written agreement they made beforehand states differently)?

- Yes
- No
- Unsure

13. Should married couples who cannot agree on how to divide their property also have up to a maximum of two years after they separate to start a property division proceeding in court (unless a court order or a written agreement they made beforehand states differently)?

- Yes
- No
- Unsure

14. Please explain your response.

Section C – Dividing Property

Property owned before the relationship

In Nova Scotia and New Brunswick, if one person owned property before the relationship, it is generally included in the property to be divided at the end of the relationship. These are the only provinces where this happens. Once people are in a relationship and living together, they may use what they brought into the relationship for the benefit of the family. It is proposed that if one person owned property before the couple began living together, they would generally get to keep that property. However, any increase in that property's value during the relationship would generally be shared with the other person when they separate.

15. Should the value of property owned by one partner or spouse **before the relationship began** (*before they began living together or were married, whichever came first*) be excluded from an equal division of family property?

- Yes
- No
- Unsure

16. Please explain your response.

Business Assets

Business assets include property related to a commercial business, an investment or other income-producing purpose. Right now, business assets held in the name of one spouse or partner, but not both, are not generally shared when the relationship ends. The spouses or partners may agree to split the value of business assets between them or ask the court to divide the value. It can be unfair to leave the non-owning spouse without a share of the business asset or the value, if they did more work inside the home, such as housekeeping, child care, or other domestic responsibilities. Most other provinces and territories have legislation that includes business assets in the equal division of family property.

It is proposed that a new family property law generally require a person who owns a business asset to divide it equally with the other when the relationship ends, unless that equal sharing was proven to be unfair. The court would be able to order (or the partners or spouses to agree) that a partner or spouse be paid the value of their portion of a business asset instead of receiving a divided portion of the asset itself.

17. Should the value of business assets generally be included in the equal division of property?
- Yes
- No
- Unsure

-
18. Please explain your response.

Limiting how long one can stay in the family home

The Matrimonial Property Act gives either person in a marriage or registered domestic partnership equal rights to stay living in the matrimonial home no matter who owns the home (whose name is on the deed). Equal rights to live in the matrimonial home end when a married couple divorces, when a court order states that only one of the two people stays in the home, a court order or agreement divides the property, or when one person dies. A new family property law that gives equal rights to live in the family home to common-law partners would therefore have to set a reasonable limit for how long these partners who do not own the family home may be entitled to live there after the relationship ends. The Final Report recommends a two-year limit for a registered domestic partner or a common-law partner who does not own the home to stay in the home (without a court order).

19. Should the new legislation put a two-year time limit on a registered domestic partner or a common-law partner who does not own the home to stay living in the home?

- Yes
- No
- Unsure

20. How long should they have to stay living in the home?

- Less than 1 year
- At least 1 years, but less than 18 months
- Other (Please specify: _____)
- Unsure

21. Please explain your response.

Dealing with family debt

Today, many people bring debt into relationships and take on debt during relationships. Current legislation does not address how to divide family debt. The courts have decided how to do this. Nova Scotia courts have decided that reasonable matrimonial debts should generally be divided equally unless that would be unfair. Matrimonial debts are debts taken on to: finance ordinary household matters during the relationship, or to keep matrimonial assets either during the relationship or after it ended.

It is proposed that “family” debt should generally be divided equally under the proposed legislation when a couple separates, unless it is proven that would be unfair. Family debt would be defined as:

- 1) debt taken on during the relationship and remained at the time of separation
AND was
 - a) In both people’s namesOR
 - b) In one person’s name but taken on for a family purpose
- 2) debt taken on after separation to keep or maintain family assets

With this new definition, no one would have to argue whether a debt was reasonable or not. They would only need to prove that both people took on the debt or that one person took it on for a family purpose.

22. Should family debt generally be divided equally when a couple separates?

- Yes
- No
- Unsure

23. Please explain your response.

24. Which of the following best describes what you think family debt should include?

- Only debt that was taken on during the relationship and existed at the time of separation that was in the name of both spouses or partners; or in the name of one spouse or partner for a family purpose
- Only debt that was taken on after separation to keep or maintain family assets.
- Both types of debts identified above
- Unsure

25. Please explain your response.

Pension

Pension plans are governed by pension law that is separate and distinct from the *Matrimonial Property Act*. Under Nova Scotia pension law, the spouse who is not the pension plan member is generally not entitled to more than 50% of the pension that was earned while the spouses were in a marital or common-law relationship.

While there have been instances where a court ordered that a spouse get more than 50% of the pension earned while the couple were in a relationship, it has been unclear whether that can be done by the pension plan. Instead, the pension plan member may have to give up some other property as compensation, or the court may have to find some other work-around.

The Government would like to adopt pension legislation that would solve these problems. The usual rule would continue to be that pension benefits earned during the relationship would be divided 50-50. But if a court ordered one person to get more than 50%, the pension plan would be able to pay this increased amount of pension benefits. Further, in certain circumstances, the court could order that the spouse who is not the pension plan member should get part of the pension earned prior to the relationship. For example, the spouse who is the pension plan member spouse may have gotten rid of other assets that should have been divided, depriving the other spouse of what they should have received in an equal division. We think that in that sort of case, the court should be able to order the pension plan to pay the appropriate amount and it should be clear that pension plan administrators could pay the funds if so ordered. This would allow better outcomes in situations when one spouse's pension is the couple's only significant asset.

26. Are there circumstances where it would be important for the court to have the ability to order a spouse or common-law partner who is not the member or pensioner of the pension plan to receive greater than 50% of the pension earned during the marriage or common-law relationship?

- Yes
 - No
 - Unsure
-

27. Are there circumstances where it would be important for the court to have the ability to order the full amount of a pension, not just the portion earned during the marriage or relationship, to be split?

- Yes
- No
- Unsure

Section D - Profile

The following questions will help us analyze survey responses. Please be assured that all information you provide will be completely confidential.

28. What is your postal code?

Prefer not to say

29. In what year were you born?

Prefer not to say

30. Which gender do you identify with?

- Male
 - Female
 - Other
 - Prefer not to say
-

31. Which of the following groups do you identify with?

- Indigenous
 - LGBTQ person
 - African Nova Scotian
 - Immigrant or new Canadian
 - Acadian
 - None of the above
-

32. Which of the following broad income categories best describes your total household income before taxes in the last year?

- Less than \$25,000
- At least \$25,000 but less than \$50,000
- At least \$50,000, but less than \$75,000
- At least \$75,000, but less than \$100,000
- \$100,000 or more
- Unsure/Prefer not to say

33. Is there anything else you would like to see in the proposed legislation? Please be as specific as possible.

Nothing else

34. During the month of January, the Province will be holding a series of group discussions with citizens impacted by Family Property division. If you are interested in being contacted to see if you are available to take part in a group discussion, please provide your contact information below. All those taking part would receive a cash incentive for their time.

Name: _____

Phone Number: _____

Email: _____

Not interested

Thank you for taking the time to share your comments! Your feedback will help us improve Nova Scotia's family property law.

For general information about family property law and other family law issues, go to: <https://www.nsfamilylaw.ca/> You may also contact the Legal Information Society of Nova Scotia: www.legalinfo.org