

Common Law Relationships, not the same as Marriage

I find that many people fail to understand the different rights that they have on separation between a common law relationship and a legal marriage.

The legal test for a common law relationship is flexible and considers many factors including at least three continuous years of living together in a "marriage like" relationship.

The courts will consider issues such as living and sleeping arrangements, participation in social events, the relationship with each other's families, their attitude and conduct in the community, financial arrangements and their attitude and conduct concerning children.

That time can be shortened if the couple have a child or adopt one, and the test becomes "a relationship of some permanence".

Unlike in a marriage situation, in a common law relationship there is no automatic equal division of net family property. This is a major problem in long term common law relationships. The common law partners must try to establish an interest in the other's assets by claims (which are complicated) for resulting and constructive trusts.

Often the woman has done all the work around the house including meals, shopping, (often paying for the food) clothes washing, and other domestic services. It is difficult to transfer this type of work into a claim for an interest in the other spouse's assets and therefore the woman usually loses credit for all of this work.

Also, in a common law relationship there is no "matrimonial home" and therefore no sharing of the value of it and no right to possession (as does a spouse in a marriage).

Spousal support is also a problem. Although the legislation provides that common law spouses should be treated the same as legally married spouses, in practice it seems that the court provides lower spousal support payments in common law relationships.

Common law spouses may by will leave assets to each other, but if one dies and does not make provision for the other in a will, the remaining common law spouse is not entitled to the spousal rights to inherit property that a married person has under the Succession Law Reform Act,

There is some good news for common law partners. They can apply for a division of the others increase in Canada Pension benefits during the relationship, and for survivor benefits on the death of the other, after only one year of a common law relationship.

The harsh reality is that if you are living in a common law relationship your rights are far less than the rights of those living in a legal marriage situation. It is usually the woman who suffers financially on separation. You need good legal advice and a proper cohabitation agreement to deal with your individual circumstances.