

Common Law Relationships

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I. INTRODUCTION

“First, discrimination on the basis of marital status touches the essential dignity and worth of the individual in the same way as other recognized grounds of discrimination, violative of fundamental human rights norms. Specifically, it touches the individual’s freedom to live life with the mate of one’s choice in the fashion of one’s choice. This is a matter of defining importance to individuals. It is not a matter which should be excluded from *Charter* consideration on the ground that its recognition would trivialize the equality guarantee.”¹

“In theory, the individual is free to choose whether to marry or not to marry. In practice, however, the reality may be otherwise. The sanction of the union by the State through civil marriage cannot always be obtained. The law; the reluctance of one’s partner to marry; financial, religious or social constraints – these factors and others commonly function to prevent partners who otherwise operate as a family unit from formally marrying. In short, marital status often lies beyond the individual’s effective control.”²

Persons who reside in common law relationships in Alberta enjoy most of the same rights and entitlements as persons who have gone through a marriage ceremony. In almost all aspects of an individual’s life a marriage certificate is of little consequence to one’s ability to access rights, protections and obligations. Legislative reform and court decisions have added to the perception that many Canadian holds that, whether you are a married or unmarried person living in a conjugal relationship, you would be treated in a similar fashion in all aspects. In some provinces, British Columbia, Saskatchewan, Manitoba, Northwest Territories and Nunavut this perception is a reality of life. In Alberta a marriage certificate is still determinant of whether an individual can access the *Matrimonial Property Act*, which provides for the presumption of equal sharing of property acquired during the marriage and presumes contribution of the spouses upon the dissolution of the relationship. Although child support and spousal support are available to unmarried cohabitants, the exclusion from the property regime leaves individuals in these relationships vulnerable.

This paper will review the law in Alberta application to common law relationships. The paper is divided into a number of sections. I will begin with the historical development of property rights for common law individuals, reviewing the case law with *Peter v. Beblow*. I will then review the most recent Supreme Court of Canada decision, *Kerr v. Baranow*, and its subsequent interpretation. I will discuss *Walsh* and the more recent Quebec decision, as well as the legislative responses in the various provinces. I will then examine spousal support entitlement in common law relationships. I will then review the *Adult Interdependent Relationships Act* and, finally, the entitlements under provincial, federal legislation and private rules.

¹ *Miron v. Trudel*, (1995) 13 R.F.L. 1 at parag. 151..

² *Ibid*, parag. 153.