

Property Rights of Common Law Spouses and the New Family Law Act

- 1.** The new Family Law act came into effect on March 18th, 2013 which dramatically affects the property rights of partners who have been living together for at least two years in a relationship resembling marriage.
- 2.** Under the former law, Common Law spouses had few, if any, property rights should they separate and relied on proving their respective contributions to the acquiring of property during their relationship and there is no presumption of equal sharing as you find with married couples.
- 3.** The new Family Law Act provides that upon the separation of Common Law spouses, the property acquired by the spouses would be shared equally, provided that property brought into the relationship before or after it commenced, would be excluded, but that any increase in the property would be shared equally.
- 4.** For example, if a spouse received an inheritance either before or after the Common Law relationship commenced and they have lived together for at least two years, a claim could be made by the other spouse to one of the increase in the value of that inheritance.
- 5.** In order to respect the wishes of the Common Law spouses, a Cohabitation Agreement should be entered into which would enable the couple to set out their wishes and to not necessarily have the provisions of the Family Law Act apply. In addition, the Cohabitation Agreement can state how future acquired property should be shared.