

Overview of the Financial Aspects of the new *Family Law Act*

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The *Family Law Act* came into force in British Columbia on March 18, 2013, replacing the antiquated *Family Relations Act* which became law over 30 years ago. Significant societal changes have taken place in the last three decades, particularly around the meaning and definition of family, and the legislature has taken steps to bring the law into line with today's social structures and expectations. Major changes have been made regarding the financial ramifications of the breakdown of relationships between spouses, both married and common law.

Common law spouses now have the same rights and responsibilities regarding assets and debts as do married couples. An unmarried couple will be considered to be spouses if they have lived together in a marriage-like relationship for a continuous period of at least 2 years. Upon separation, spouses are each entitled to an undivided half interest in all family property as a tenant in common and also are each equally responsible for family debt.

Family property includes property owned by one or both of the spouses at the time of separation, or in which at least one spouse has a beneficial interest. Property acquired after separation that is derived from property owned at the time of separation will also be considered family property. Some common examples of family property are the family home, bank accounts, shares in a corporation, and pensions. The legislation now excludes some property from division. For example, property acquired before a relationship began and inheritances received during the relationship are excluded from family property. However, any increase in value of excluded property accrued during the relationship constitutes family property and that portion is therefore subject to equal division. The Court retains the discretion to deviate from these starting presumptions if they would be significantly unfair in the circumstances.

Family debt includes all financial obligations incurred by a spouse during the relationship until separation, or after separation if incurred for the purpose of maintaining family property. As with division of family property, the Court has the discretion to divide family debt unequally between the spouses if it would be significantly unfair to divide it equally. It is unclear at this early stage of the new law how payment will be enforced as the *Family Law Act* likely cannot supersede the contractual obligations a debtor has to a lender nor the federal bankruptcy legislation.

Couples are able to contract out of the terms of the *Family Law Act* by entering into a Cohabitation Agreement or Marriage Agreement at the start of a relationship, or a Separation Agreement at the end. All issues arising out of the breakdown of a relationship can be resolved by written agreement, except for the divorce itself. Implementing a written agreement at the outset of a relationship is beneficial because it will clarify the value of existing assets and debts, and determine how the couple wishes to have property and support issues handled in the event of a separation or the death of a spouse during the relationship. The Court will generally uphold written agreements unless they are found to be significantly unfair or lacking full disclosure.

Family law is still a nuanced field of law that yields highly variable results based on the particular circumstances of particular families. It is strongly advisable to obtain independent legal advice to determine how the law applies to one's own situation before entering into any agreements, be it in good times or bad.