

# STEP Inside

NEWSLETTER OF THE SOCIETY OF TRUST AND ESTATE PRACTITIONERS (CANADA)

Beneficiary Designations:  
We Need to Talk *page 3*

The Discretionary Nature of  
Common-Law Trusts in the  
Context of Changing Compliance  
and Disclosure Requirements  
*page 8*

New Brunswick's New Enduring  
Powers of Attorney Act *page 12*

Bill 18: Modernizing Quebec's  
Protection of Incapable Persons  
*page 14*



## MODERNIZATION OF FAMILY LAW IN NOVA SCOTIA

### **SARAH M. ALMON**

*Stewart McKelvey  
Associate Member, STEP Atlantic*

Many Nova Scotians are surprised to discover that the current statute governing family property division, the 40-year-old *Matrimonial Property Act* (the Act), does not take into account the widely diverse family situations existing in this province.

In 2017, Nova Scotia's Law Reform Commission (now known as the

Access to Justice & Law Reform Institute) issued a final report recommending that updates be made to the Act to address the changes that have occurred in Nova Scotia over the decades since it came into force. These changes include an increase in the number of common-law couples, a decrease in the number of married couples, a decrease in the number of children within family groups, an increase in second and third marriages, and an increase in the number of older couples entering relationships and bringing with them more of their own property and debt.

Earlier this year, the provincial government announced its intention to address these and other issues in the course of modernizing the family law regime in Nova Scotia.

### **Current Family Law Regime**

The current Act applies only to married couples and registered domestic partners (partners who have registered their domestic partnership with the Nova Scotia Department of Vital Statistics).

When a couple is married or has a registered domestic partnership, there is a presumption under the Act (subject to exceptions based on a family's circumstances) that the property used in their marriage or partnership is to be equally shared on their separation; this presumption covers any property owned by only one spouse or partner before the relationship began and excludes (among other things) business assets, gifts, inheritances received by one spouse or partner from outside the relationship, and trusts received by one spouse from outside the relationship (unless used for family purposes). However, as the Access to Justice & Law Reform Institute discovered during its public consultations, many

common-law couples are unaware that this general presumption of equal division does not apply to them.

### **Rationale for Change and Highlights from the Proposal**

Because the Act does not apply to common-law couples, there is no legislation in Nova Scotia that defines how these couples' assets and debts are to be divided on the termination

and couples living in a registered domestic partnership;

- a spouse or partner who does not own the family home could remain in the home for up to two years after separation without a court order;
- property brought into the relationship by one spouse or partner would be excluded from division, but an increase in the value of family property that occurred

and there is currently no deadline for incorporating the proposed changes into a new family property statute (which is probably at least the partial result of other governmental priorities related to COVID-19). Nonetheless, the Act requires modernization, and it is desirable that these important updates to family law in Nova Scotia be brought into effect soon.

For more information on this topic, see the following links:

- <https://novascotia.ca/family-property-law-survey/family-property-law-background.pdf>
- <https://novascotia.ca/family-property-law-survey/family-property-law-chart-of-proposed-changes.pdf>
- <https://lawreform.ns.ca/wp-content/uploads/2020/04/division-offamilyproperty-finalreport.pdf>

**Nova Scotia's family property division regime differs from that of other Canadian provinces and territories in that property brought by one partner into the relationship is generally subject to equal division, but business and other broad categories of assets are generally excluded from the presumption of equal division.**

of their relationships. Many separated common-law couples therefore require legal advice on dividing their assets and debts, which renders an emotionally charged process even more complicated and expensive, and raises questions about access to justice.

Nova Scotia's family property division regime differs from that of other Canadian provinces and territories in that property brought by one partner into the relationship is generally subject to equal division, but business and other broad categories of assets are generally excluded from the presumption of equal division. These matters are addressed in new proposals by Nova Scotia's Department of Justice. Under these proposals,

- common-law partners who have lived together continuously for at least two years would be treated in the same way as married couples

during the relationship would be shared;

- business assets would no longer be presumptively excluded from equal division (however, no changes have yet been proposed regarding the other current exceptions, such as gifts, inheritances, or trusts);
- new provisions would be included to divide family debt equally; and
- pension law would be updated to reflect that a spouse or partner could be entitled to more than 50 percent of the portion of the pension earned during the relationship under certain circumstances.

### **Timeline**

The provincial government released a background paper, facilitated public discussions, and made a public survey available in early 2020; the results of the survey have not yet been released,