

## REFERENCE GUIDE

# Common-law Partnership - Quebec

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As you may know, various laws recognize a common-law relationship (hereafter referred to as common-law partnership) and provide the same rights and obligations to common-law partners as married couples, while other laws do not recognize such status and treat common-law partners as strangers. Note that most laws that recognize common-law partners apply both to opposite and same sex couples.

The determination as to whether or not two partners are in a common-law partnership may vary depending on the legislation being considered. Set forth is a general summary of various considerations related to the determination and consequences of common-law partner status in the province of Quebec.

## Tax Considerations

Common-law partners are treated the same way as married couples for tax purposes. For tax purposes, a common-law partner of a taxpayer at any time means a person who cohabits in a conjugal relationship with the taxpayer, provided that:

- they have so cohabited throughout a continuous one-year period before that time, or
- the person is a parent of the taxpayer's child (in other words, both are parents of the same child).

Once the taxpayer and the person cohabit in a conjugal relationship, they are deemed to be cohabiting in a conjugal relationship at any time after that, unless they have not cohabited for a period of at least 90 days because of a breakdown of their conjugal relationship. Therefore, once a common-law partnership exists, it is deemed to continue until there is a breakdown marked by a separation of at least 90 days.

The definition of common-law partners is mandatory for income tax purposes. People do not elect or have the choice to be or not to be common-law partners for tax purposes; they are, or they are not, depending on whether or not they meet the conditions under the tax laws. Two persons engaged in a relationship must therefore assess their own situation, and report accordingly for tax purposes.

Being considered common-law partners for tax purposes triggers various tax consequences. The consequences are numerous and complex and it is beyond the scope of this reference guide to review them in detail.

Some effects that may be considered favourable of being considered common-law partners include:

- personal tax credits are available (e.g. spousal credit),
- spousal rollovers and spousal trust rollovers are available (tax-free transfers between common-law partners during their lifetime or upon death), and

- registered plan benefits for spouses are available (spousal plans permitted, rollover upon death to the surviving common-law partner, election based on the age of the common-law partner with respect to minimum withdrawals and possible splitting of eligible pension income).

Some effects that may be considered unfavourable of being considered common-law partners include:

- application of complex attribution rules with respect to loans or transfers between common-law partners,
- principal residence exemption limited to only one residence per family, and
- stop-loss rules may apply with respect to transfers to affiliated persons, which include a common-law partner.

## Civil Code of Quebec

The Civil Code of Quebec (CCQ) does not provide common-law partners with the same status as married couples (or couples involved in a formal civil union) with respect to their civil rights and obligations. This means that:

- the family patrimony provisions under the CCQ do not apply to common-law partners,
- common-law partners have no spousal rights or obligations against each other (such as alimentary support) in the case of a relation breakdown<sup>1</sup>, and
- no rights or benefits are granted to the surviving common-law partner in a succession ab intestat (without a will). If it is intended to benefit the common-law partner upon death, it is required to have a will prepared with specific provisions with respect to devolution of assets to the common-law partner.

## Other Statutes

Other social legislation may provide rights to common-law partners (as this concept is defined in the particular legislation) in various circumstances. For example:

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<sup>1</sup> Note however that in November 2010 the Quebec Court of Appeal issued a decision (Droit de la famille-102866, 2010 QCCA 1978) in which it declared invalid a provision of the Civil Code of Quebec denying the right to claim spousal support to a common-law partner in case of breakdown of their relationship. This declaration of invalidity has been temporarily suspended for 12 months by the court to allow for appropriate legislation to be drafted by the Quebec government. The Supreme Court of Canada has also granted leave to appeal this decision. It is therefore unclear, at this stage, what will be the specific future rights and obligations of Quebec common-law partners in that regard.

- benefits may be paid to the common-law partner under the Act Respecting Industrial Accidents and Occupational Diseases and the Automobile Insurance Act, and
- the surviving common-law partner may, in various circumstances, have a right to share admissible gains accumulated during the cohabitation period or be entitled to pension payments under the Act Respecting the Québec Pension Plan and the Supplemental Pension Plan Act.

Other laws also specifically recognize common-law partners. It is beyond the scope of this reference guide to review all of the legislation in detail.

## **Cohabitation agreement**

Common-law partners may contractually determine in advance certain rules applicable during the relationship and the consequences related to an eventual termination of their relationship through a cohabitation agreement. A cohabitation agreement may, for example, contain the following provisions:

- a list of the properties owned separately and in co-ownership by the common-law partners, including buy-out options in certain circumstances,;
- rules as to how the partners are to contribute towards various expenses during cohabitation,
- the payment of a pension or other financial assistance or compensation to the partner during cohabitation or in case of breakdown of the relationship, and
- any other specific issues the common-law partners would like to agree to in advance, to the extent they are not inconsistent with public order.

You may wish to review the matter with your legal advisor in light of your specific needs and objectives, and determine whether or not a cohabitation agreement should be prepared in your case.

## **Conclusion**

The rules regarding common-law partnership are complex and evolving. If you are in a common-law partnership, or are contemplating entering into such a partnership, a review of your rights and obligations with a professional legal advisor is highly recommended.