

Cohabiting couples:

Some things you should know

Wendy and Arthur have lived together for five months. Although they have a living arrangement similar to that of husband and wife they are not legally married. In the eyes of the law they are considered to be a cohabitating couple. These informal marriage relationships are often referred to as common law marriages. What is the legal status of their relationship? What rights are they entitled to? What obligations do they have?

Many people believe that if Wendy and Arthur live together long enough they will become legally married. This is false. Wendy and Arthur will only be legally married if they obtain a marriage licence and go through a marriage ceremony.

The property rights of cohabitating couples are different from those of married couples. Anything Wendy brought into the relationship will be hers. The same is true for Arthur. If they bought something together it would belong to both of them. It would be considered joint property and upon separation Wendy and Arthur would have to decide how to divide it. They could write up a separation agreement which would set out how their property will be divided.

Wendy and Arthur could also go to court and have a judge decide how to divide up the property. The judge will look at the circumstances surrounding the purchase and use of the property. He or she will consider any contribution either person made to the property. This would include money to pay for the property or work done to maintain the property. The judge will try to divide the property as fairly as possible.

There are steps that Wendy and Arthur can take to protect their interest in the property. When they began living together they

could have drawn up a cohabitation agreement. This agreement would set out the rights and obligations of both parties while they are living together. It also may specify what will happen upon separation. This may include such things as division of property or payment of support. To be legal, a cohabitation agreement must be in writing, signed by both parties and witnessed. If Wendy and Arthur marry after they have signed a cohabitation agreement it would become a marriage contract.

If Wendy and Arthur have a child while they are living together, they will each be responsible for child support. Under the Family Services Act, a cohabitating partner is required to pay support if the relationship ends. The amount will depend on their ability to pay. They will also have joint access and custody rights unless there is an agreement or a court order to contrary.

If Wendy and Arthur live together continuously for three years and then separate, one of them could be entitled to get financial support from the other. If one party was dependent on the other they may be entitled to support. If they had a child together the three year requirement may be set aside. The amount of support depends on need and ability to pay.

A cohabitating couple will not be entitled to the same tax benefits as a married couple but some of the married provisions may apply to cohabitating couples. For example, deductions can be claimed for dependant children or support payments.

Cohabitation partners may be entitled to claim benefits of federal pension plans. The plans require that the couple has lived together for a specified period. For example, the Canada Pension Plan requires that the couple have lived together for one year before

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the partner is entitled to benefits. However, if for some reason the cohabitating couple cannot marry (he or she is already married) the time requirement is three years.

This column is intended to be used as a guide only. It is not meant to be a replacement for professional legal advice. If you require further legal information or legal counselling, please contact a lawyer.

a poem

Start Small

*Don't try to save the forest
first.
Start with the tree in your
backyard.*

By Andrea Watson
Grade 5 Student

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continued from page 11

of ambassadors from different and hostile interests; parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen, he is not member of Bristol, but he is a member of Parliament".

I'm going to remember Burke's words in the next election, and, if my representative is found wanting, I'll take John Strachan's advice, Toronto Legislative Council, 1821: "The law! the law! never mind the law - turn him out; turn him out!"



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