

Dying without a will and “spousal” rights

Married Canadians may think that making a valid will is not necessary because everything will go to their spouses on death. That may be true of assets owned jointly with rights of survivorship. That may also be true of assets that get passed on because the assets have named beneficiaries. This doesn't cover all assets. Canadians may believe that the rights of legally married couples and common law couples are pretty much the same. That may be true under income tax laws. It is not the case under estate laws across the country. In fact, the definition of common law partner is not the same across the country.

The definition of “spouse” continues to evolve and so do the associated rules, rights and obligations of partners in a relationship. The advent of same sex marriages ushered in further expansions of rights. It is very important to understand what the definitions are across Canada. Advisors may have clients in different jurisdictions. Clients may move between provinces for jobs or lifestyle. Being aware of the rules, rights and obligations of couples during the relationship, on breakdown of the relationship and at death, allows for proper planning and avoids unpleasant and disappointing surprises when one of these life events occurs.

This chart considers the rights of a “spouse” on the death of a partner and in particular, what happens when a person dies intestate. Specifically, one partner dies owning property (not jointly owned and where there is no named beneficiary) and has no valid will or the will does not cover all assets. The chart provides evidence of the need to draw up a valid will if the desires of an individual regarding the passing on of his or her estate do not line up with government formulae. Generally, in an intestacy, the laws of domicile (where the deceased or spouse lives) applies to movable property and the law of situs (where the property is located) applies to immovable property. The following general rules apply:

- Where the spouse survives, the entire estate goes to the spouse.
- Where there is a spouse and a child or children, the estate is divided as follows:



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Wills, intestacy and spousal rights

Province	Preferential share to spouse (net assets after taxes, expenses and debts are paid)	Remaining assets (spouse + 1 child)	Remaining assets (spouse + >1 child)	Definition of spouse and special rules
British Columbia	<p>\$300,000 plus household furnishings and 1/2 of residue</p> <p>If second marriage or child not of both deceased and spouse, then only \$150,000</p> <p>If estate is less than preferential value, spouse gets entire estate</p>	<p>1/2 to spouse; 1/2 to child</p>	<p>1/3 to spouse, 2/3 to children.</p> <p>If second marriage or child not of both deceased and spouse, then 1/2 to spouse and 1/2 to all children</p>	<p>"Spouse" includes common-law spouse; may be considered so after living together for 2 years and excludes those separated for more than one year, except where otherwise determined on application to the court.</p> <p>No matrimonial property claims or dependant's relief opportunity.</p> <p>Having a child no shortcut to common law status.</p> <p>More than one spouse possible, generally share equally unless they agree otherwise.</p>
Alberta	<p>All to spouse if only spouse or spouse with common descendant children</p> <p>Otherwise preferential share is greater of 50% or \$150,000</p>	<p>All to spouse if her children as well, otherwise greater of 50% or \$150,000, child receives the rest</p>	<p>All to spouse if her children as well, otherwise greater of 50% or \$150,000, children split the rest</p>	<p>"Spouse" includes adult interdependent partner living together for 3 years and excludes those separated for more than two years, or who had previously executed a separation agreement.</p> <p>Special rules when there is both surviving spouse and surviving adult interdependent partner with "spousal" share split between them.</p> <p>Where adult interdependent partner is also related to the deceased, there is an exclusion from any further allocation from the estate.</p> <p>"child" includes any biological children and adopted children.</p> <p>No matrimonial property claims.</p>
Saskatchewan	<p>\$100,000</p>	<p>1/2 to spouse; 1/2 to child</p>	<p>1/3 to spouse, 2/3 to children</p>	<p>"Spouse" includes common-law partner; may be considered so after living together for 2 years and excludes legally married spouses who were cohabiting with someone else on the date of death.</p> <p>Spouse may apply for larger share as dependant if not adequately provided for and may apply for matrimonial property division on death.</p>

Wills, intestacy and spousal rights

Province	Preferential share to spouse (net assets after taxes, expenses and debts are paid)	Remaining assets (spouse + 1 child)	Remaining assets (spouse + >1 child)	Definition of spouse and special rules
Manitoba	\$50,000 or 1/2 of estate (whichever is greater)	All to spouse, where all of the children are also children of the surviving spouse. Otherwise, 1/2 to spouse; 1/2 to child	All to spouse, where all of the children are also children of the surviving spouse. Otherwise, 1/2 to spouse; 1/2 to children	<p>"Spouse" includes common-law partner; may be considered so after living together for 3 years; or cohabited for min. 1 yr and are both parents of a child common law couples may register with Vital Statistics to speed up a later estate entitlement and includes separated spouses and common-law partners who had not previously divided their assets under a separation agreement.</p> <p>Spouse may apply for matrimonial property division on death.</p> <p>If both surviving spouse and common law spouse, then most recent relationship has priority; ie only one spouse inherits.</p>
Ontario	\$200,000	1/2 to spouse; 1/2 to child	1/3 to spouse; 2/3 to children	<p>"Spouse" means only legally married.</p> <p>Spouse may opt for equalization payment under s. 5 of the Family Law Act, if it results in a greater share.</p>
Quebec	Nil; 100% to spouse if no relatives; otherwise 2/3 to spouse and; 1/3 to parents if living or 1/3 to siblings if parents deceased	1/3 to spouse; 2/3 to child	1/3 to spouse; 2/3 to children	<p>"Spouse" means legally married and includes those joined in a civil union.</p> <p>Where marriage contract or notarial civil union contract exists, any relevant provisions in it will supersede the rules on intestate succession.</p>
New Brunswick	Marital property	1/2 to spouse; 1/2 to child	1/3 to spouse; 2/3 to children	<p>"Spouse" means only legally married.</p> <p>"Child" does not include stepchild.</p>
Nova Scotia	\$50,000	1/2 to spouse; 1/2 to child	1/3 to spouse; 2/3 to children	<p>"Spouse" means only legally married.</p> <p>Common law couples who register status as domestic partners with Vital Statistics also eligible; may be so considered after living together for 2 years.</p> <p>"Child" does not include stepchild or child raised by non-biological parent and not legally adopted.</p> <p>Spouse may apply for matrimonial property division on death.</p> <p>Spouse may claim matrimonial home instead of share, regardless of value.</p>

Wills, intestacy and spousal rights

Province	Preferential share to spouse (net assets after taxes, expenses and debts are paid)	Remaining assets (spouse + 1 child)	Remaining assets (spouse + >1 child)	Definition of spouse and special rules
Prince Edward Island	nil	1/2 to spouse; 1/2 to child	1/3 to spouse; 2/3 to children	"Spouse" means only legally married . No matrimonial property claims. "Child" does not include stepchild .
Newfoundland and Labrador	nil	1/2 to spouse; 1/2 to child	1/3 to spouse; 2/3 to children	"Spouse" means only legally married . "Child" does not include stepchild . Spouse may not opt for equalization payment under the Family Law Act, if it results in a greater share.
Yukon	\$75,000	1/2 to spouse; 1/2 to child	1/3 to spouse; 2/3 to children	Common-law spouses may apply to the court for share of the estate. No matrimonial property claims. "Child" does not include stepchild .
Northwest Territories	\$50,000	1/2 to spouse; 1/2 to child	1/3 to spouse; 2/3 to children	"Spouse" includes common-law partners and excludes legally married spouses who were cohabiting with someone else on the date of death, had initiated divorce proceedings and had not reconciled, or had previously divided their assets on separation. "Spouse" excludes a legally married spouse where the intestate had entered into a spousal relationship with another person. Spouse may apply for matrimonial property division on death. "Child" does not include stepchild .
Nunavut	\$50,000	1/2 to spouse; 1/2 to child	1/3 to spouse; 2/3 to children	Same as for Northwest Territories

All data provided in the table above is as at July 2018 published by the respective jurisdictions in Canada.

¹ Where there is no surviving spouse but there are surviving children, the estate is divided equally among the children.

² Where there is no surviving spouse or children, the estate devolves according to the rules of [consanguinity](#) i.e. a table that describes the priority of family members entitled to get the estate (parents, siblings, nieces and nephews, etc.)

³ Where no heir can be determined, the estate is declared [bona vacantia](#) and [escheats](#) to the Crown.

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Updated May 2019

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