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Public Legal Information Association of NL

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the

PLIAN

notebook

PROVIDING NEWFOUNDLANDERS & LABRADORIANS WITH PUBLIC LEGAL EDUCATION AND INFORMATION SERVICES WITH THE INTENT OF INCREASING ACCESS TO JUSTICE.

Disclaimer: The information provided in this publication is general in nature and is not intended as legal advice. We strongly suggest speaking with a lawyer for specific legal advice.

Clarifying “Common Law” Relationships

When it comes to common law relationships, there is much to consider. There are significant differences between legal marriages and common law relationships.

Generally speaking, a common law relationship is when two people, of the same or opposite sex, live together in a conjugal relationship. In other words, it is a marriage-like relationship but it is not a legal marriage.

To have a legal marriage there must be a legal ceremony, either religious or civil, and other requirements, such as a marriage license. A common law relationship will NOT automatically become a legal marriage after a certain amount of time.

Many people have the impression that after a couple lives together for a specific amount of time they will automatically receive all of the same rights as married couples. This is not true. While common law relationships are recognized by the government and other organizations, it is important to note that no matter how long a common law couple lives together they do not necessarily gain all the

same rights and obligations under the law as married couples.

For example, under the *Family Law Act* of Newfoundland and Labrador, married spouses have an equal right to the family home (unless they’ve agreed otherwise). It does not matter whether or not it was owned by one spouse before marriage, how and when it was acquired, or if it was purchased in just one name. **However**, this rule does **NOT** automatically apply to common law couples in our province, no matter how long they have lived together.

Another mistaken belief about common law relationships is that there is one set of requirements in Canada to obtain common law status. This is also incorrect. In fact, federal and provincial laws, employers, insurance plans, and pension plans may all set out different criteria for recognizing a common law relationship.

It may depend on such factors as the length of the relationship, if the partners have children



together, and/or whether or not there is still a husband or wife from a previous relationship.

For example, the same income tax rules apply to married couples and unmarried couples who have lived together for 12 consecutive months. However, under the Worker’s Compensation program, a common law partner will only be entitled to payments if the relationship has lasted for 5 years, or 2 years if they have children together and there is not a husband or wife from a previous relationship.

The *Family Law Act* addresses a number of family matters, such as child support and spousal support. The *Act* defines a “partner” as either of two persons who have cohabited in a conjugal relationship (*continued on next page*)

Common Law Explained (cont'd)



outside of marriage for at least two years OR for at least one year where they have a child together.

However, the protection the **Family Law Act** provides common law couples has its limitations. For example, it does **NOT** address the division of property for common law couples, only married couples.

People always have the freedom to express their rights and responsibilities to one another through contracts.

A **contract** is a great way for a couple to protect their interests because it provides an opportunity for a couple to decide their own issues. It can help avoid the possibility of going to court later on to ask a judge to decide the issues.

A **co-habitation agreement** is a contract between a common law couple that sets out each of their rights and obligations toward one another while living together, or on ceasing to

live together and in some cases, upon death.

By entering into a co-habitation agreement, common law couples can decide if they want to have the same rights married persons benefit from under the law.

This is important because, as mentioned earlier, the rights of common law couples are not necessarily the same as those for married couples and they are not always clearly defined.

The basic requirements to make a co-habitation agreement are as follows: (1) the agreement must be in writing; (2) it must be signed by both parties; and (3) it must be witnessed.

You may draft the terms of the agreement yourself, but it is highly advisable to seek independent legal advice before signing any agreement to ensure you completely understand all of your rights and obligations.

“ A co-habitation agreement is a contract between a common law couple that sets out each of their rights. ”

KEEP IN MIND:
PLIAN provides the public with general information. It does not provide legal advice.

Common Law Partners and The Division of Property

You and your common law partner have gone your separate ways. How do you decide who leaves with what?

The **Family Law Act** sets out the rules for dividing property and debts between married couples, but unfortunately, the **Act does NOT** address the division of property for common law couples.

THE BASIC RULE

The basic rule for dividing property between common law couples is that when the relationship comes to an end, each person keeps what belongs to them. It is either registered in their name or goes to the person who bought it. This rule usually applies to debts too.

If an asset is in **BOTH** of your names, then normally you are both entitled to **HALF of its value**. You'll need to decide between yourselves how to deal with it. Either one of you will have to buy the other out, or you will have to sell the asset and divide the proceeds equally.

If there is a **co-habitation** (or any other legal

agreement, what is in each party's name is not necessarily **their** property. It will depend on the terms you set out in the agreement, which may sometimes allow you some of the same rights as married couples, depending on the terms you choose.

UNJUST ENRICHMENT

If you're unhappy with the division of property (and do not have a written agreement) you may be able to make a claim that the other person has been "unjustly enriched."

Basically, this means one person has gained some kind of advantage from another person's work without a justifiable legal reason. Perhaps one partner stayed at home to raise the children, allowing the other to continue in the work force -- and with those earnings purchase most of the family property.

The basic requirements for unjust enrichment are: (1) One spouse has been enriched; (2) There is a corresponding deprivation to the other spouse; and (3) There is no legal reason for the enrichment. It is strongly advised that you speak with a lawyer to see if you have a claim for unjust enrichment.



DIVISION OF BENEFITS

Federal laws have a range of rules for dividing benefits and plans between common law couples. They often depend on factors such as the length of the relationship and whether there is also a husband or wife.

If your partner has CPP benefits, for example, you can request a division of these benefits under federal law if you have lived together for 12 consecutive months or longer.

You should contact the appropriate organization to determine your eligibility for the division of benefits.



Message from the Executive Director

Public Legal Information Association of NL (PLIAN) is a non-profit organization dedicated to educating Newfoundlanders and Labradorians about the law.

Here at PLIAN, we provide public legal education and information services with the intent of increasing access to justice.

This edition of our quarterly newsletter focuses on **common law relationships** in Newfoundland and Labrador.

As more and more people choose to live in common law relationships, individuals are seeking more knowledge about this type of legal living arrangement.

What many people don't realize is the rights and obligations that flow from this type of relationship are not necessarily

the same as for married couples. Join us in learning more through a discussion of common law relationships, complete with Q&A, a case study and general information to improve your understanding of this very common yet sometimes complex subject.

By highlighting this important topic, we hope to help our readers become better informed about their rights and responsibilities. We hope you enjoy this edition of PLIAN's Notebook.

Best regards,

K. O'Keefe.

Kristen O'Keefe
Executive Director

OUR NEW LOOK: A Newsletter Makeover!



We're proud to present a brand new format for the PLIAN Notebook newsletter!

We welcome your feedback and invite you to send in your upcoming public legal information news and announcements.

To submit an item to be considered for inclusion in the January 2011 edition, contact Jennifer Barnable at programs@publiclegalinfo.com.

"HERE & THERE" A PLIAN Team Update

This Autumn, PLIAN saw some changes to its Board and Staff. First, we bid farewell to Project Coordinator **ROBIN SINGLETON** (top left). Robin was instrumental in delivering the Department of Justice Canada-funded project "Family Law Information Sessions: Reaching Rural Communities in Newfoundland and Labrador." She presented family law information sessions in 16 communities, from Bell Island to Hopedale. Robin was a true asset to the PLIAN team and will certainly be missed. We wish her success as she embarks on an Articling position. Congratulations Robin and keep up the great work!

PLIAN also welcomed a new member of its team during this time: **JENNIFER BARNABLE** (staff photo, top right). Jennifer will be working as project coordinator for a project funded by the Law Foundation of Ontario's "Access to Justice Fund." Through this financial support, PLIAN will produce a divorce kit for uncontested divorces, as well as an information kit for executors. Jennifer comes to PLIAN with national and international work experience in public relations, marketing, writing, communications and project management.

Finally, we would also like to extend a very special thank you to **Honourable Judge ROBERT HYSLOP** (top right) who is retiring from the PLIAN Board. Judge Hyslop has been a long-standing member of our Board and has brought a wealth of experience and knowledge as a Director. His efforts and achievements include an appointment as Associate Chief Judge of the Provincial Court of Newfoundland and Labrador, his work

within the Department of Justice and through his service as a member of the Canadian delegation to the sixth United Nations Congress of the Prevention of Crime and Treatment of Offenders in Venezuela, to name just a few. Judge Hyslop has been a valuable asset to PLIAN and will be missed, however we wish him much success in his future endeavours.



YOUTH JUSTICE

Engaging Aboriginal Youth

Earlier this year, PLIAN received funding from the federal Department of Justice under the **Youth Justice Fund** to deliver a project focusing on Aboriginal youth's access to justice.

Led by PLIAN Project Coordinator Sarah McHugh, "Exploring Access to Justice for Aboriginal Youth in Newfoundland and Labrador" has begun.

This project will seek to explore language, cultural and legal barriers to fair and effective justice for Aboriginal youth in conflict with the law in Newfoundland and Labrador through a series of focus group sessions.

The sessions will be delivered throughout various Aboriginal communities around the province. Participants will include Aboriginal youth and service providers.

To find out more information on this particular project, contact Sarah McHugh at (709) 722-2805 or send an e-mail



inquiry to projects@publiclegalinfo.com.

If you are interested in details on the federal Youth Justice Fund, visit <http://www.justice.gc.ca>.

LEGAL BEAGLE

Puzzlers from PLIAN



Hey folks! I'm Molly...but you can call me the "Legal Beagle."

That's right. A legal beagle. What do you mean you've never heard of one? Let me explain.

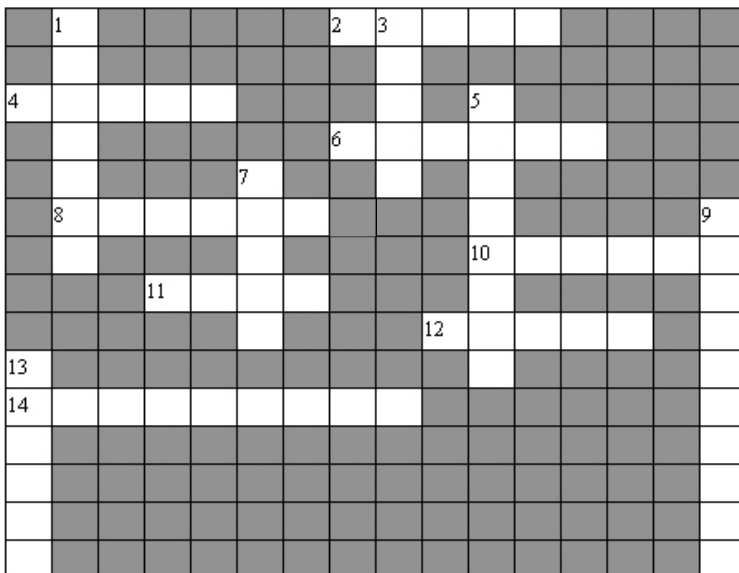
See, my mom's a lawyer and some of it rubbed off on me. Plus us dog folk have a real nose for investigating!

That's why they called ME in. Over here on the left, you'll see your challenge. It's no regular crossword puzzle, though. The answers are all key words taken from sections of the newsletter. I'm smart like that.

Don't worry, I'll start you off with a pretty easy-to-solve puzzle this time. They'll get tougher every edition, so stay tuned for more.

Enjoy!

P.S. Once you're finished, you can check out the answers at the bottom of page 6.



ACROSS

2. we're here for you
4. you own it
6. a _____ unit
8. not extraordinary
10. partner
11. ask the judge to _____ an order
12. not elderly
14. protect yourself with a written one

DOWN

1. "And _____ for all."
3. as in eagle
5. as in math, but not with times tables
7. a room of judgement
9. to solve, come to an agreement
13. represents you in court

CASE STUDY

Real People. Real Life Cases.

For a person to make a claim of unjust enrichment, some requirements must be met and proven. First, one spouse has been enriched. Second, there was a corresponding deprivation to the other spouse, and finally, there was no legal reason for the enrichment.

The following facts, as presented, are from the court judgement of the Supreme Court of Newfoundland and Labrador.



L v. D

In L v. D, Ms. L and Mr. D lived together as a common-law couple for just over 11 years. The couple had two children together. Mr. D worked to provide for the family and Ms. L's role was primarily that of mother and homemaker.

The couple purchased a family home during the course of their relationship. Mr. D made the down payment on the home and secured the loan for the purchase. Ms. L did not make financial contributions to the purchase of the home but during the course of the relationship she contributed domestic services and child care in the home. She claimed that she did about 75% of cleaning, meal preparation, laundry, grocery and child care duties (the judge accepted this evidence). Ms L alleged that Mr. D also discouraged her from pursuing outside employment or further education (the judge accepted this evidence as well).

The judge concluded that Ms. L established an unjust enrichment of Mr. D because her duties in the home allowed Mr. D to work for wages outside the home, advance his career and pay down the house; that she suffered a deprivation as a result because she put her own career aspirations on hold to be available as a full time mother and that there was no legal justification for the enrichment. Also, the judge was satisfied that there was a necessary connection between the home and the contribution of Ms. L to entitle her to an interest in the family home.

The Verdict:

Ms. L was allowed a 50% share of the family home after deducting the mortgage and the assets Mr. D put toward the home that Mr. D had accumulated prior to the relationship.

Conclusion:

Despite popular belief, common law rights are not the same as the rights which flow from marriage and they are not always clearly defined. If you are in a common law relationship, it is wise to keep a record of your purchases and financial contributions. However, another way to protect your interests in a common law relationship is to have a legal written agreement. Consult with a lawyer to ensure your interests are properly protected.

SPOTLIGHT: Celebrating Our Partners & Funders

PLIAN values its partnerships around the province and across the country. In this edition, we're pleased to highlight the following organizations:



Labrador Aboriginal Legal Services

Labrador Aboriginal Legal Services (LALS) is a non-profit organization whose mandate is to "Provide all Aboriginal Persons with fair and equitable treatment before the law" by providing information to clients regarding the charges that have been made against him/her, their rights and responsibilities, the court process, helping to obtain a lawyer through Legal Aid and providing referrals. LALS has collaborated with PLIAN to deliver Youth Justice Camps in Happy Valley-Goose Bay, Nain and Hopedale. We greatly appreciate the expertise, cooperation and support LALS provides.



PLIAN has just commenced a new project to produce a divorce kit for uncontested divorces for the province of Newfoundland and Labrador. The project will also include the development of an information kit for executors. This project is being funded through the Law Foundation of Ontario's "Access to Justice Fund." To learn more about the Access to Justice Fund Grants Program, visit <http://www.lawfoundation.on.ca/atjf>.

Newfoundland Aboriginal Women's Network



Newfoundland Aboriginal Women's Network (NAWN) is a culture-based organization, designed to promote, enhance and encourage the health, social, educational, organization, designed to promote, enhance and encourage the health, social, educational, economic, cultural and political well-being of Aboriginal Women within the Island portion of the province. PLIAN is pleased to announce that NAWN is partnering with us on a project exploring barriers to access to justice for Aboriginal youth in conflict with the law in Newfoundland and Labrador. Focus groups will be delivered to Aboriginal youth and service providers across the entire province. NAWN will be involved in an advisory capacity and will also assist in the delivery of these focus groups.

Questions & Answers about Common Law



Disclaimer: Please be advised that the information provided by PLIAN is general in nature and is not intended as legal advice. We strongly suggest you speak with a lawyer for specific legal advice.

Q. Is it illegal to be in a common law relationship if you or your partner is married to someone else?

No, it is not illegal to be in a common law relationship if you or your partner is married to someone else. Some rights and/or obligations may in fact flow from a common law relationship although one of the partners is still married. However, any voluntary sexual

relations a married person has outside of marriage, even during periods of separation, may be used as a ground for divorce.

Q. Can I be required to pay child support for my ex-partner's children?

A common law partner who is not the biological parent of a child may sometimes be required to pay child support for a partner's child after the relationship breaks down. The definition of a "parent" in the *Family Law Act* includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, with some exceptions such as foster care. Basically, a claim may be put forward where the common law spouse acted as a parent to the child. If it is decided that child support should be paid, a judge will use a set of guidelines called the Child Support Guidelines to determine how much child support should be paid.

Q. Are common law partners eligible for spousal support?

A partner in a common law relationship may be entitled to spousal support after the relationship breaks down but it will depend on the facts of the case. Spousal support should compensate ex-partners for the financial impact of the relationship (for example, if one partner gave up work to care for children). However, spousal support should also ensure that after a relationship is over, neither partner suffers economic hardship. It is especially important to consult with a family lawyer if you are concerned about your eligibility for spousal support and you were in a common law relationship.

Q. I don't know where my ex-partner is and I want to change my child's name. How can I do this?

If a parent decides to change a child's name after it has been registered, the procedure depends on how the child was named at birth. If the biological parents of the child have never married, the parent with lawful custody may apply to change the child's name. If custody is joint, the consent of both parents will likely be needed. If the child is 12 years of age or older, the child's consent is needed for the change to take place. For more information visit Vital Statistics online (www.gs.gov.nl.ca/gv/vs/), call them directly (709.729.3308) or e-mail an inquiry (vstats@gov.nl.ca).

Q. What is Family Justice Services? What do they offer?

Family Justice Services (FJS) offers free services to residents within the province involved in family law matters. The goal of FJS is to deal with family law issues, in a timely and fair manner, outside of the court setting. FJS provides parent education, dispute resolution, mediation and counseling services to families who are experiencing issues of custody, access and child support. You can access Family Justice Services by either completing a "Request for Service" form or an "Application to Court" online at http://www.justice.gov.nl.ca/just/departement/branches/division/division_family_justice_services.html.



CONTACT US

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**LEGAL BEAGLE
PUZZLE ANSWERS:**
1. justice, 2. PLIAN, 3. legal,
4. asset, 5. division, 6. family,
7. court, 8. common, 9. resolu-
tion, 10. spouse, 11. vary,
12. youth, 13. lawyer, 14.
agreement.