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*Category: Cohabitation*

A majority of young adult Canadians are choosing common law relationships over traditional marriage. According to Statistics Canada over 53.3% of young women between the ages of 20 to 29 and a majority of young men in their 20's choose living common law versus marriage. Even among older Canadian adults between the ages of 30 to 39 almost 40% of both men and women are choosing common law relationships as at least a short term alternative to marriage.

However, those who choose to live in a common law relationship may be under the impression that there are no legal implications should they decide to simply "walk away" from the relationship". This is certainly not the case, particularly with respect to child and spousal support. In my own family law practice I am constantly amazed at the reaction I receive when I advise clients, at the end of a common law relationship, that they may have a continuing obligation to pay child support to a child of their former common law partner. An obligation which may extend until the child has completed university, regardless of whether or not the child's natural father is contributing to the child's support. In addition to child support there may also be an obligation to pay spousal support. This can occur if "the marriage-like relationship" has lasted for more than 2 years, and the application for support is brought not more than 1 year after the end of the relationship.

There is also the possibility, at the end of a common law relationship, that one of the parties will claim an interest, based on trust or unjust enrichment, against property owned by the other party. This can occur if one party contributed either financially or through labor and materials towards the operation, upkeep or maintenance of the property. All good reasons for those considering entering into a common law relationship to obtain legal advice about potential rights and obligations and having them properly addressed in a Co-habitation Agreement.

The aim of such an Agreement is to address issues

of support and property if the relationship should terminate. There are, however, limitations to such Agreements. For example, an Agreement may specify in the event that there are children from another relationship residing with the couple that the non biological parent "will not be considered as standing in the place of a parent to the child" in an attempt to avoid future child support obligations.

Despite this language, a court may decide on the facts that the parent did "stand in the place of a parent to the child" and order child support. Also, with respect to provisions addressing property, which typically attempt to keep the property separate, courts have the jurisdiction to review property provisions and to re-apportion entitlement if deemed unfair.

Despite these limitations, I still believe that it is far better for co-habiting couples to carefully consider and prepare a well drafted Co-habitation Agreement with both parties obtaining independent legal advice. Or, as an alternative just get married! But that's a whole new topic for a future column. 