

Newsletter



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Avocats • Lawyers

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Don't forget your *de facto* spouse in your estate planning!

Whereas they were a rarity half a century ago, unwed couples are now quite common. In Quebec, especially, where this author practises, 38% of couples are *de facto* couples.

Social acceptance of this reality has had an impact on legislation: numerous provisions granting advantages to spouses apply whether or not they are legally married or in a civil union. For instance, under Quebec's *Automobile Insurance Act*, a *de facto* spouse of a person who dies in a car accident is entitled to a lump sum indemnity just like a widow or widower, provided they have lived together for three years or they have a child.

Similarly, the children of unmarried spouses are also granted rights to support when their parents separate: no longer will the law penalize the children for the "moral fault" of their unwed parents!

However, despite this legislative intent to treat unmarried and married couples

alike, all differences have not been erased. As clarified by the Supreme Court in the landmark decision *Quebec (Attorney General) v. A*, [2013] 1 SCR 61, 2013 SCC 5, better known as *Eric v. Lola*, Quebec has not extended to unmarried couples all the provisions concerning support, the family residence, the family patrimony, the compensatory allowance or the partnership of acquests.

Moreover, without a will, unmarried spouses have no right to share in the estate of their significant other. Their children do have these rights, however.

Under Article 666 of the *Civil Code of Québec*, if a married spouse dies without a will, her or his spouse takes one-third of the succession and their children, the other two-thirds. If they are not married, the children take all, potentially leaving the surviving spouse penniless. This could even lead to the situation where a surviving parent could claim support from the children!



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Unmarried couples can be lulled into a deceptive sense of security by generous legislative provisions that have been enacted over the years, or mistakenly believing that they have the same rights on death as in the rest of Canada. Too often, they realize their mistake after a

spouse has died, when it is too late to fix things.

There is a simple way to avoid this dramatic situation.

Make a will and keep it up to date.

