

APPENDIX I: Statutory Property Claims on Marital Breakdown and Death in Canada

Canadian Province or Territory	Applicable Legislation	Property Division Model	Who can make a claim for property division on marital breakdown?	Who can make a claim for property division on death?
Alberta	<i>Matrimonial Property Act</i> , R.S.A. 2000, c. M-8	Proprietary model	Legally married spouses only (s. 1(e), s. 7).	<p>Legally married spouses only <i>if the application could have been commenced immediately prior to the other spouse's death</i> (i.e., if there was a marriage breakdown during the joint lives of the spouses (s. 11)).</p> <p>--</p> <p>Under pending amendments contained in the <i>Wills and Succession Act</i>, S.A. 2010, c. W-12.2, death will be a triggering event for a matrimonial property claim, for legally married spouses only.</p>
British Columbia	<i>Family Law Act</i> , S.B.C. 2011, c.25	Proprietary model	Legally married spouses and non-married cohabiting spouses who have lived together in a marriage-like relationship for a continuous period of at least two years (s.1, s. 3, s. 81).	Death is not a triggering event. No claim available for either legally married spouses or non-married cohabiting spouses.

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Manitoba	<p><i>The Family Property Act</i>, C.C.S.M., c. F25</p> <p>-- AND --</p> <p><i>Vital Statistics Act</i>, S.M. 2002, c. 48</p>	Compensation model	Legally married spouses (s. 1, s. 13) as well as non-married, cohabiting spouses who have (a) registered a common-law relationship under s. 13(1) of <i>The Vital Statistics Act</i> , or (b) who have cohabited in a conjugal relationship for a period of at least three years (s. 1(1), s. 2.1).	Legally married spouses (s. 1, s. 28) as well as non-married, cohabiting spouses who have (a) registered a common-law relationship under s. 13(1) of <i>The Vital Statistics Act</i> , or (b) who have cohabited in a conjugal relationship for a period of at least three years (s. 1(1), s. 2.1 and s. 28).
New Brunswick	<i>Marital Property Act</i> , S.N.B. 2012, c. 107	Proprietary model	Legally married spouses only (s. 1, s. 3).	Legally married spouses only (s. 1, s. 4).
Newfoundland and Labrador	<i>Family Law Act</i> , R.S.N.L. 1990, c. F-2	Proprietary model	Legally married spouses only (s. 2(1)(e), s. 21); however s. 63(3) expressly permits common-law partners, through a cohabitation agreement, to adopt the statutory provisions.	Legally married spouses only (s. 2(1)(e) and s. 21); however s. 63(3) expressly permits common-law partners, through a cohabitation agreement, to adopt the statutory provisions.
Northwest Territories	<i>Family Law Act</i> , S.N.W.T. 1997, c. 18	Compensation model	Legally married spouses and non-married cohabiting spouses who have lived together in a conjugal relationship outside marriage if (a) they have so lived for a period of at least two years; or (b) the relationship is one of some permanence and they are together the natural or adoptive parents of a child (s. 1(1), s. 36).	Legally married spouses and non-married, cohabiting spouses who have lived together in a conjugal relationship outside marriage if (a) they have so lived for a period of at least two years; or (b) the relationship is one of some permanence and they are together the natural or adoptive parents of a child (s. 37 and s. 1(1)).

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Nova Scotia	<p><i>Matrimonial Property Act</i>, R.S.N.S. 1989, c. 275</p> <p>-- AND --</p> <p><i>Vital Statistics Act</i>, R.S.N.S. 1989, c. 494</p>	Proprietary model	<p>Legally married spouses (s. 2(g), s. 12); however claim available to non-married, cohabiting spouses if a domestic partner declaration is appropriately filed under the <i>Vital Statistics Act</i> (s. 54(1) and s. 54(2)(g)).</p> <p>Note: Despite the definition of “spouse” in the Act still referring to “either of a man and woman who...are married to each other...”, Nova Scotia counsel advises that lawyers in the province proceed on the assumption that all legally married persons are treated the same under the Act and that it is anticipated a judge would interpret the wording broadly so as to include same-sex married spouses.</p>	<p>Legally married spouses (s. 2(g), s. 12); however claim available to non-married, cohabiting spouses if a domestic partner declaration is appropriately filed under the <i>Vital Statistics Act</i> (s. 54(1) and s. 54(2)(g)).</p> <p>Note: Despite the definition of “spouse” in the Act still referring to “either of a man and woman who...are married to each other...”, Nova Scotia counsel advises that lawyers in the province proceed on the assumption that all legally married persons are treated the same under the Act and that it is anticipated a judge would interpret the wording broadly so as to include same-sex married spouses.</p>
Nunavut	<p><i>Family Law Act</i>, S.N.W.T. (Nunavut) 1997, c. 18</p>	Compensation model	<p>Legally married spouses and non-married cohabiting spouses who have lived together in a conjugal relationship outside marriage with another person if (a) they have so lived for a period of at least two years, or (b) the relationship is one of some permanence and they are together the natural or adoptive parents of a child (s. 1(1), s. 36(1)).</p>	<p>Legally married spouses and non-married, cohabiting spouses who have lived together in a conjugal relationship outside marriage with another person if (a) they have so lived for a period of at least two years, or (b) the relationship is one of some permanence and they are together the natural or adoptive parents of a child (s. 1(1), s. 36(2)).</p>

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Ontario	<i>Family Law Act</i> , R.S.O. 1990, c. F.3	Compensation model	Legally married spouses only (s. 1(1), s. 5(1)).	Legally married spouses only (s. 1(1); s. 5(2)).
Prince Edward Island	<i>Family Law Act</i> , R.S.P.E.I. 1988, c. F-2.1	Compensation model	Legally married spouses only (s. 1(1), s. 6(1)).	Death is not a triggering event. No claim available for either legally married spouses or non-married cohabiting spouses (unless a claim has already been commenced prior to death by a legally married spouse (s. 7(2)).
Saskatchewan	<i>The Family Property Act</i> , S.S. 1997, c. F-6.3	Proprietary model	Legally married spouses and non-married, cohabiting spouses who have cohabited as spouses continuously for a period of not less than two years (s. 2(1), s. 21).	Legally married spouses and non-married, cohabiting spouses who have cohabited as spouses continuously for a period of not less than two years s. 2(1), s. 30).
Yukon	<i>Family Property and Support Act</i> , R.S.Y. 2002, c. 83	Proprietary model	Legally married spouses only (s. 1, s. 6). Note: While the definition of "spouse" continues to refer to "either of a man and a woman" who are married to each other, it is assumed that similar to the situation in Nova Scotia, the wording would be broadly interpreted to include same-sex married couples. Amendments to the definition of spouse to include common-law couples who have cohabited as a couple for at least 12 continuous months have been pending since 1998 and have yet to be proclaimed into force.	Death is not a triggering event. No claim available for either legally married spouses or non-married cohabiting spouses (unless a claim has already been commenced prior to death by a legally married spouse (s.18)).

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Quebec	<i>Civil Code of Quebec, S.Q. 1991, c. 64</i>	Compensation model (partnership of acquests regime)	Legally married spouses only (Arts. 485-491), subject to couples entering into a civil union in which they acquire all of the rights and responsibilities of married couples under Quebec law, including Quebec's property laws (Art. 521.1).	<p>Patrimonial rights arising from the family patrimony (Arts. 416 to 426) and partition of acquests rights where the matrimonial regime is partnership of acquests (Art. 467): legally married spouses only, subject to couples entering into a civil union in which they acquire all of the rights and responsibilities of married couples under Quebec law, including Quebec's property laws (Art. 521.1).</p> <p>Partnership of acquests: the default legal matrimonial regime provides that upon marriage dissolution, the net value of the mass acquests (or property) is established and divided equally between the spouses, subject to certain adjustments.</p> <p>Family patrimony: the <i>Code</i> also sets out mandatory provisions regarding the establishment and sharing of this special category of assets, which includes residences, furniture and vehicles used by the family. The net value of these assets accumulated by the spouses during the marriage is divided equally upon divorce, legal separation, annulment of marriage or death of one of the spouses, irrespective of the matrimonial regime selected or who has ownership of the assets. There is judicial discretion, however, to award an unequal division based on certain factors.</p>

