



Name of Country and Jurisdiction:

**Canada**

- 1. What forms of legally recognized relationships are available?
- 2. What are the requirements to be able to enter into the above relationships?
- 3. Differences between marriage and civil unions and how the two sets of laws interact.
- 4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?
- 5. When a couple comes to Canada, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?
- 6. How can each form of relationship be dissolved? What is the residency requirement or other link to Canada for an authority to grant a divorce/ dissolution?



1. What forms of legally recognized relationships are available?



LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	GOVERNMENT REGISTRY	LAW	AVAILABLE TO SAME-SEX COUPLES?
Marriage	Federal	Couples can marry by obtaining a license and registering with the appropriate province.	Civil Marriage Act.	Yes. Marriage is fully recognized on a federal basis for same-sex couples.
Common-law	Federally recognized in specific instances; defined by provinces /territories; available in all provinces and territories except Alberta, which refers to unmarried partners as interdependent adults.	Registration options and requirements vary by province.	Laws governing common law partnerships vary by province, territory, and sometimes by statute, as there does not exist a sole definition of "common law."	Yes.

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LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	GOVERNMENT REGISTRY	LAW	AVAILABLE TO SAME-SEX COUPLES?
Adult interdependent relationship	Alberta	A written agreement between the parties may be signed to form the relationship but is not required.	Adult Interdependent Relationships Act.	Yes.
Civil union	Quebec	Civil unions must be registered.	Civil Code of Quebec (1991, c. 64, a. 37; 2002, c. 6, s. 25).	Yes.
Domestic partnership	Nova Scotia	Parties to a domestic partnership must make a domestic-partner declaration.	Nova Scotia Vital Statistics Act, Part II.	Yes.

**NOTE:** “Common law” partnerships that exist in Canada are numerous and complicated:

1. “Common law” status is defined by the family laws of many provinces and territories, but what constitutes “common law” is also defined by a number of other statutes at the federal and provincial level. For example, a “common law” partnership in a given province may require cohabitation for a specific number of years, while “common law partner” for purposes of federal immigration law requires cohabiting for 12 months. “Common law” for purposes of receiving benefits in a province upon dissolution of a non-marital relationship may have different requirements as well. Accordingly, there is no single definition of “common law”; there are many variations on whether a relationship is considered “common law” for purposes of recognition within a province, or to meet the requirements of a particular statute.
2. Given Canada’s federal recognition of same-sex equality, “common law” relationships are equally available to opposite-sex and same-sex couples.

Given the above, this questionnaire identifies three instances where provincial law provides for a formally recognized relationship that is not marriage, but that is not “common law”, and discusses them where applicable (i.e. Alberta “Adult Interdependent Relationship”, Quebec “Civil Union”, and Nova Scotia “Domestic Partnership.”) “Common law” partnerships are otherwise addressed as one group, as describing the different requirements for “common law” status throughout Canada would require a significant amount of resources.

**Q**

**2. What are the requirements to be able to enter into the above relationships?**

**A**

Marriage	There is no residency requirement for a same-sex couple to marry in Canada. Requirements to obtain a marriage license, which are issued by individual provinces, vary by region (for example, age requirement or documents required). However, these requirements are not different for same-sex couples as compared to opposite-sex couples, in light of the country’s federal recognition of equal same-sex marriage.
Common law	To be considered in a “common law” relationship, a couple must live together for a period of time that varies depending on the province or territory where they live, anywhere from an undefined period of time to 3 years. The time period requirement may vary if they also have a child together.  Federal recognition of common law status (e.g. for immigration sponsorship) typically requires cohabitating in a conjugal relationship for 12 months or more.

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Adult Interdependent Relationship (Alberta only)	<p>Either (1) live in a relationship of interdependence for at least 3 years, or a relationship of some permanence if the couple has a child. (Based on this requirement alone, Canada may recognize an AIR even when a couple does not intend to create one.);</p> <p>or</p> <p>(2) Enter into a written adult interdependent partner agreement.</p>
Civil Union (Quebec only)	The requirements to enter into a civil union are essentially the same as for a marriage, although the age of consent for a civil union is 18.
Domestic Partnership (Nova Scotia only)	Domestic partnerships are only available to individuals who reside in or own property in Nova Scotia, are more than 19 years of age, and not married or in another domestic partnership.

**Q**

**3. If both marriage and civil unions exist in the country:**

- (a) Identify any significant differences in eligibility; and
- (b) Briefly highlight how they interact if both are in effect (e.g., in some countries entering into a marriage with the same or a different person automatically dissolves any civil union that the two parties were previously party to making the latter vulnerable and potentially circumventing separation laws).
- (c) If both marriage and civil unions are available to same sex couples, briefly highlight areas where major differences exist between marriage and civil unions (e.g., taxes, adoption, immigration, etc.).

**A**

(a)	<p>Same-sex couples are equally eligible as opposite-sex couples for all forms of recognized partnerships in Canada. The differences with respect to eligibility concern the eligibility requirements for these different types of relationships.</p> <p>Any two individuals can marry; the laws of the province or territory govern the exact eligibility requirements such as age of consent and documentation required.</p> <p>Common law relationships are recognized for purposes of partnership status within a province or territory, or for purposes of eligibility under a particular statute. Nearly all provinces and territories have a form of “common law” relationship, and there are numerous federal and provincial laws that recognize “common law” partners for different purposes. In these instances, the law of the province/territory or the wording of the statute governs eligibility, which typically requires a period of time during which the couple cohabitates.</p> <p>Adult Interdependent Relationships (Alberta only) are specifically created outside of marriage, and have specific eligibility requirements.</p> <p>In Quebec and Nova Scotia, couples can choose between either to marry or enter into a civil union (Quebec) or a domestic partnership (Nova Scotia), as the eligibility requirements are essentially the same, although each has different legal effects.</p>
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(b)	<p>In Alberta, a person cannot become an interdependent adult partner while at the same time living with his or her spouse and cannot have more than one interdependent adult partner.</p> <p>In Quebec, an individual entering into a civil union must not be party to another marriage or civil union, but marriage between two people already in a civil union dissolves the union.</p> <p>In Nova Scotia, a person may not enter into a domestic partnership if he or she is married or in another domestic partnership. If one of the parties to a domestic partnership marries a third party, this terminates the domestic partnership.</p>
(c)	<p>Given Canada's federal recognition of equal rights for same-sex couples, there are no differences between the various formal or common law relationships that may be entered into by a same-sex couple as compared to an opposite-sex couple.</p> <p>Among the different relationships that can be formed by couples (opposite-sex or same-sex), however, laws governing dissolution vary by province and affect a number of areas including spousal support, property division, succession (inheritance) and others. In many provinces, unmarried partners have fewer rights in these areas.</p> <p>Canada's federal Divorce Act applies rules across Canada regarding spousal support, but provinces and territories have their own laws regarding spousal support for unmarried partners or couples who are separating but not divorcing. In Quebec, unmarried common law partners (known as "de facto" spouses) are not entitled to spousal support.</p> <p>For federal immigration purposes, unmarried partners can sponsor each other for immigration purposes if they meet the federal requirements for a common law relationship.</p> <p>For immigration purposes, there is also a status called "conjugal partner" which is a foreign partner who is not able to legally marry their sponsor partner. This status is similar to common law partner but requires showing that there were obstacles or restrictions that prevented the couple from cohabitating or marrying.</p>

**Q**

**4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?**

**A**

Marriage	An individual cannot get married if they are already married or are in a registered relationship in another country that would be considered marriage in Canada. Such a relationship must be dissolved prior to being married in Canada. Proof of divorce or dissolution is required to be married, although the specific documents required vary by province.
Common law	Generally the definition of "common law" includes that the individuals in the couple are unmarried.
Adult Interdependent Partner (Alberta only)	<p>A person cannot become an interdependent adult partner while at the same time living with his or her spouse.</p> <p>A person may only have one adult interdependent partner at one time.</p>
Civil Union (Quebec only)	Individuals must be free of any past civil union or marriage.
Domestic Partnership (Nova Scotia only)	A person cannot make a domestic-partner declaration if he or she is married or in another domestic partnership.



Q

**5. When a couple comes to Canada, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?**

A

Marriage	Marriages performed elsewhere will be recognized as marriages if the marriage is recognized in the place it was performed and also would have been valid if performed in Canada. Even civil unions performed elsewhere <i>may</i> be recognized as marriages in Canada, if the civil union was the only option for a formally-recognized relationship where the parties lived, and it offered identical rights and responsibilities as marriage.
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**6. How can each form of relationship be dissolved? What is the residency requirement or other link to Canada for an authority to grant a divorce/ dissolution?**

A

Marriage	<p>Dissolution of marriage in Canada can be granted to couples who were either married in Canada or were married in another country, but their marriage is recognized in Canada.</p> <p>The grounds for divorce is a “marriage breakdown” and the couple must show one of the following three criteria: (1) they have been living apart for one year or more; (2) one spouse has been physically or mentally cruel to the other; or (3) one spouse has committed adultery.</p> <p>There is also a residency requirement, with an exception for couples who were married in Canada, but are residing in a country where they are unable to dissolve their marriage.</p> <ol style="list-style-type: none"> <li>1. A couple residing in Canada may file for divorce in a province where at least one spouse has resided for at least one year before commencing the divorce proceeding.</li> <li>2. A separate procedure exists for non-resident spouses. If neither spouse resides in Canada when applying for divorce, they may obtain a divorce in the province where their marriage was performed if they meet the following three requirements: (1) the breakdown of the marriage is established by the spouses having lived apart and separate for at least one year, (2) neither spouse resides in Canada when applying for divorce, and (3) each of the spouses currently resides in a country that will not grant them a divorce because that state does not recognize the validity of the marriage, and has resided in such a state for the year immediately before filing for divorce.</li> </ol>
Common Law	Provinces and territories have laws applying to dissolution of common law relationships and marriages that should be consulted in addition to the federal Divorce Act.

<p>Adult Interdependent Relationship (Alberta only)</p>	<p>An interdependent adult partnership may be dissolved several different ways:</p> <ol style="list-style-type: none"> <li>1. By written agreement;</li> <li>2. By living separate and apart for more than one year and intending that the relationship not continue;</li> <li>3. If the partners marry each other, or if one of the partners marries a third party;</li> <li>4. If one party enters into an adult interdependent partner agreement with a third party;</li> <li>5. if one or both parties obtains a declaration of irreconcilability under the Family Law Act of Alberta.</li> </ol>
<p>Civil Union (Quebec only)</p>	<p>A civil union may be dissolved by court order or by joint declaration of the spouses, subject to certain requirements.</p> <p>A civil union is automatically dissolved if the spouses subsequently marry each other.</p>
<p>Domestic Partnership (Nova Scotia only)</p>	<p>A domestic partnership may be terminated by one of the following:</p> <ol style="list-style-type: none"> <li>1. An executed statement of termination or court agreement by the parties.</li> <li>2. If one of the domestic partners marries another person.</li> <li>3. If the parties live separate and apart for more than one year and one or both of them has the intent that the relationship not continue.</li> </ol>

## ■ Sources:

### Federal Law:

- Civil Marriage Act (2005). <http://laws-lois.justice.gc.ca/eng/acts/c-31.5/page-1.html>
- Divorce Act. <http://laws-lois.justice.gc.ca/PDF/D-3.4.pdf>

### Secondary Sources – Federal:

- Library of Parliament, Parliamentary Information and Research Service, Sexual Orientation and Legal Rights (2010). <http://www.parl.gc.ca/Content/LOP/researchpublications/921-e.pdf>
- Helpful explanation of divorce for non-residents: [http://www.nclrights.org/wp-content/uploads/2013/07/Divorce\\_in\\_DOMA\\_States\\_Attorney\\_Guide.pdf](http://www.nclrights.org/wp-content/uploads/2013/07/Divorce_in_DOMA_States_Attorney_Guide.pdf) (see page 9-10).
- Canadian Government website: How To Apply for a Divorce - <http://www.justice.gc.ca/eng/fl-df/divorce/app.html#ex>.
- <http://www.justice.gc.ca/eng/fl-df/divorce/sd.html>
- <http://www.cic.gc.ca/english/information/applications/guides/3900ETOC.asp#conjugal>
- <http://www.justice.gc.ca/eng/fl-df/spousal-epoux/ss-pae.html>

### Quebec:

- Quebec civil unions: <http://www.justice.gouv.qc.ca/english/publications/generale/union-civ-a.htm#conditions>
- Quebec Civil Code re Marriage and Civil Unions: <http://www.justice.gouv.qc.ca/english/ministere/lois/regle/mar-uni-a.htm>

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**Nova Scotia domestic partnerships:**

- <http://www.novascotia.ca/snsmr/access/vitalstats/domestic-partnership.asp>
- <http://nslegislature.ca/legc/statutes/vitalsta.htm>

**Alberta Adult Interdependent Relationships Act:**

- <http://www.qp.alberta.ca/documents/Acts/A04P5.pdf>
- <http://humanservices.alberta.ca/documents/opt-adult-interdependent-relationships-act-and-you.pdf>