# Publisher's Note

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## COHABITATION: THE LAW IN CANADA

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**Release No. 8, October 2026**

This unique looseleaf is specifically focused on legislation and case law regulating domestic relations between unmarried spouses, including same-sex couples. Prepared by experts in the law of cohabitation and aided by contributions from experts from across Canada, each chapter deals with a particular topic and analyzes both the legislation and case law pertinent to that topic in the common law provinces and Quebec.

### What's New in this Update

This release features updates to Chapter 9-S (Tax Implications), Chapter 10-S (Miscellaneous Consequences), and Chapter 11-S (Same-Sex Cohabitation).

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**Highlights**

- **Tax Implications — Generally —** *Enns v. Canada*, 2025 FCA 14 — The Federal Court of Appeal resolved conflicting authority from the Tax Court of Canada on whether a surviving spouse remains a "spouse" for purposes of s. 160(1)(a) of the *Income Tax Act* after the other spouse's death. The Appeal Court held that spousal and common-law status ends on death. The deeming rule in the definition of "common-law partner", under which cohabiting partners are deemed to continue cohabiting absent a 90-day separation, cannot sensibly apply after death, since the condition that would end the deeming can never be satisfied once only one partner survives. RRSP proceeds passing to a surviving designated beneficiary were accordingly not a transfer to a "spouse", and the s. 160 assessment against the beneficiary was vacated.
- **Miscellaneous Consequences — Workers Compensation Legislation — Ontario —** *Decision No. 490/23*, 2026 ONWSIAT 3 (Ont. W.S.I.A.T.) — The Tribunal denied survivor benefits to the girlfriend of a worker who had been killed in a workplace accident. She had not cohabited with the worker for one year as of his death, and in any event could not establish a "conjugal" relationship given the parties' complete absence of financial interdependence (they had no joint assets, accounts, or credit, and she remained a dependant of her own parents). The Tribunal emphasized that conjugal status requires deliberate action demonstrating both parties' mutual intent to form a permanent, interdependent relationship. It cannot arise inadvertently, or rest on one party's unilateral belief, and an unfulfilled intention to marry is insufficient on its own.
- **Same-Sex Cohabitation — Custody and Access —** *Deng v. Liu*, 2026 ONSC 1283 (Ont. S.C.J.) — On a motion for a temporary order, the court increased a parent's parenting time notwithstanding a signed separation agreement addressing parenting arrangements, after finding the other parent had unilaterally altered the agreement and restricted contact in a manner limiting the moving parent's time with the younger child. Given the unresolved circumstances surrounding the agreement's negotiation (which included a disputed claim of duress, no financial disclosure, and no independent legal advice) it was accorded little weight; the terms of a domestic contract terms respecting parenting time do not displace the court's obligation to decide parenting issues according to the best interests of the child.