



SPOUSAL CLAIMS ON AN INTESTACY: CROSS-PROVINCIAL EXAMINATION

<p>ALBERTA</p>	<p><i>Wills And Succession Act, SA 2010, c w-12.2</i></p>	<p>60 If an individual dies leaving a surviving spouse or adult interdependent partner but no descendants, the entirety of the intestate estate goes to the surviving spouse or adult interdependent partner.</p> <p>61(1) Subject to section 63, if an individual dies leaving a surviving spouse and one or more descendants, or leaving a surviving adult interdependent partner and one or more descendants,</p> <ul style="list-style-type: none"> a) the entirety of the intestate estate goes to the surviving spouse or adult interdependent partner, if all of the intestate’s descendants are also descendants of the surviving spouse or adult interdependent partner, or b) if any of the intestate’s descendants are not descendants of the surviving spouse or adult interdependent partner, <ul style="list-style-type: none"> i. the surviving spouse or adult interdependent partner is entitled to the greater of the prescribed amount or 50% of the net value of the intestate estate, and ii. the residue of the intestate estate shall be distributed among the intestate’s descendants in accordance with this Part. 	<p>-</p>
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<p>BRITISH COLUMBIA</p>	<p><i>Wills, Estates and Succession Act, SBC 2009 c 13</i></p>	<p>Spouse but no descendants 20 If a person dies without a will leaving a spouse but no surviving descendant, the intestate estate must be distributed to the spouse.</p> <p>Spouse and descendants 21 (2) If a person dies without a will leaving a spouse and surviving descendants, the following must be distributed from the intestate estate to the spouse: a) the household furnishings; b) a preferential share of the intestate estate in accordance with subsection (3) or (4).</p> <p>(3) If all descendants referred to in subsection (2) are descendants of both the intestate and the spouse, the preferential share of the spouse is \$300 000, or a greater amount if prescribed.</p> <p>(4) If all descendants referred to in subsection (2) are not common to the intestate and the spouse, the preferential share of the spouse is \$150 000, or a greater amount if prescribed.</p> <p>(5) If the net value of an intestate estate is less than the spouse's preferential share under subsection (3) or (4), the intestate estate must be distributed to the spouse.</p> <p>(6) If the net value of an intestate estate is the same as or greater than the spouse's preferential share under subsection (3) or (4), a) (a)the spouse has a charge on the intestate estate for the amount of the spouse's preferential share under subsection (3) or (4), and</p>	<p>2 (1)Unless subsection (2) applies, 2 persons are spouses of each other for the purposes of this Act if they were both alive immediately before a relevant time and (a)they were married to each other, or (b)they had lived with each other in a marriage-like relationship for at least 2 years.</p>
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		<p>b) (b)the residue of the intestate estate, after satisfaction of the spouse's preferential share, must be distributed as follows:</p> <ul style="list-style-type: none"> i. one half to the spouse; ii. one half to the intestate's descendants. 	
MANITOBA	<p><i>The Intestate Succession Act</i>, C.C.S.M. c. 185</p>	<p>Share of spouse or common-law partner if no issue 2(1) If an intestate dies leaving a surviving spouse or common-law partner and no issue, the entire intestate estate goes to the surviving spouse or common-law partner.</p> <p>If issue of intestate but not surviving spouse or common-law partner 2(3) If an intestate dies leaving a surviving spouse or common-law partner and issue, and one or more of the issue are not also issue of the surviving spouse or common-law partner, the share of the surviving spouse or common-law partner is</p> <ul style="list-style-type: none"> (a) \$50,000., or one-half of the intestate estate, whichever is greater; and (b) one-half of any remainder of the intestate estate after allocation of the share provided by clause (a). 	<p>1(1) "common-law partner" of an intestate means</p> <ul style="list-style-type: none"> (a) a person who, with the intestate, registered a common-law relationship under section 13.1 of <i>The Vital Statistics Act</i>, or (b) subject to subsection 11(2), a person who, not being married to the intestate, cohabited with him or her in a conjugal relationship, commencing either before or after the coming into force of this definition, <ul style="list-style-type: none"> i. for a period of at least three years,
NEW BRUNSWICK	<p><i>Devolution of Estates Act</i> RSNB 1973, c D-9</p>	<p>22(2) If an intestate dies leaving a widow and one child, the following shall go to the widow:</p> <ul style="list-style-type: none"> (a) any interest of the intestate in property that is marital property of the intestate and the widow; and (b) one-half of the residue of the intestate's estate <p>22(2.1) If an intestate dies leaving a widow and children, the following shall go to the widow:</p>	-

		<p>(a) any interest of the intestate in property that is marital property of the intestate and the widow; and (b) one-third of the residue of the intestate's estate.</p> <p>22(3) If a child dies leaving issue and such issue is alive at the date of the intestate's death, the widow shall take the same share of the estate as if the child had been living at that date.</p> <p>Intestate leaving widow and no issue 24 If an intestate dies leaving a widow but no issue his estate shall go to his widow.</p>	
<p>NEWFOUNDLAND & LABRADOR</p>	<p><i>Intestate Succession Act, RSNL 1990, c I-21</i></p>	<p>When spouse and child 4 (1) Where an intestate dies leaving a spouse and 1 child, 1/2 of the estate shall go to the spouse.</p> <p>(2) Where an intestate dies leaving a spouse and children, 1/3 of the estate shall go to the spouse.</p> <p>(3) Where a child has died leaving issue and the issue is alive at the date of the intestate's death, the spouse shall take the same share of the estate as if the child had been living at that date.</p> <p>Distribution per stirpes 5 Where an intestate dies leaving issue, the estate of the intestate shall be distributed, subject to the rights of the spouse, <i>per stirpes</i> among the issue.</p> <p>Where no issue 6 Where an intestate dies leaving a spouse but no issue the estate of that intestate shall go to the spouse.</p>	<p>-</p>

<p>NORTHWEST TERRITORIES</p>	<p><i>Intestate Succession Act, RSNWT 1988, c I-10</i></p>	<p>2 (3) The estate of a person who dies intestate leaving a spouse and issue shall go to the surviving spouse where the net value of the estate does not exceed \$100,000.</p> <p>(4) The surviving spouse is entitled to \$100,000 and has a charge on the estate for that sum with legal interest from the date of the death of the intestate where the net value of the estate exceeds \$100,000.</p> <p>(5) A surviving spouse who is entitled to \$100,000 under subsection (4) may elect to receive the home</p> <p>a) instead of the \$100,000, if the value of the home exceeds \$100,000; or</p> <p>b) as part of the \$100,000, if the value of the home does not exceed \$100,000.</p> <p>(6) The residue of the estate shall be divided among the surviving spouse and children as follows:</p> <p>a) where the intestate dies leaving a surviving spouse and one child, 1/2 shall go to the surviving spouse;</p> <p>b) where the intestate dies leaving a surviving spouse and more than one child, 1/3 shall go to the surviving spouse.</p> <p>4 The whole estate of a person who dies intestate leaving a surviving spouse but no issue shall go to the surviving spouse.</p>	<p>"spouse" has the meaning assigned to that term by section 1 of the Family Law Act. (conjoint)</p> <p><i>["spouse" means a person who (a) is married to another person, (b) has together with another person entered into a marriage that is voidable or void, in good faith on the part of the person asserting a right under this Act, or (c) has lived together in a conjugal relationship outside marriage with another person, if (i) they have so lived for a period of at least two years, or (ii) the relationship is one of some permanence and they are together the natural or adoptive parents of a child. (conjoint)]</i></p>
<p>NOVA SCOTIA</p>	<p><i>Intestate Succession Act, RSNS 199, c. 8</i></p>	<p>4 (1) If an intestate dies leaving a surviving spouse and issue, the intestate's estate, where the net value does not exceed fifty thousand dollars, shall go to the surviving spouse.</p>	<p>-</p>

		<p>(2) Where the net value of the estate exceeds fifty thousand dollars, the surviving spouse is entitled to fifty thousand dollars and has a charge upon the estate for that sum with accrued interest from the date of the death of the intestate.</p> <p>(4) Where the surviving spouse is entitled to fifty thousand dollars pursuant to subsection (2), the surviving spouse may elect to receive the home</p> <ul style="list-style-type: none"> a) in lieu of the said fifty thousand dollars where the value of the home is in excess of fifty thousand dollars; or b) as part of the said fifty thousand dollars where the value of the home does not exceed fifty thousand dollars. <p>(5) The residue of the estate shall be divided among the surviving spouse and children in the manner following:</p> <ul style="list-style-type: none"> a) if the intestate dies leaving a surviving spouse and one child, one half shall go to the surviving spouse; b) if the intestate dies leaving a surviving spouse and more than one child, one third shall go to the surviving spouse. <p>(6) If a child has died leaving issue and the issue is alive at the date of the intestate's death, the surviving spouse shall take the same share of the estate as if the child had been living at that date.</p> <p>(7) If an intestate dies leaving issue, the intestate's estate shall be distributed, subject to the right of the surviving spouse, if any, <i>per stirpes</i> among the issue.</p> <p>Surviving spouse but no issue</p>	
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<p>NUNAVUT</p>	<p><i>Intestate Succession Act, CSNu 1998, c F-30</i></p>	<p>2 Distribution of estate to surviving spouse (3) The estate of a person who dies intestate leaving a spouse and issue shall go to the surviving spouse where the net value of the estate does not exceed \$50,000.</p> <p>Where estate exceeds \$50,000 (4) The surviving spouse is entitled to \$50,000 and has a charge on the estate for that sum with legal interest from the date of the death of the intestate where the net value of the estate exceeds \$50,000.</p> <p>Election respecting home (5) Where the surviving spouse is entitled to \$50,000 under subsection (4), he or she may elect to receive the home a) instead of the \$50,000 where the value of the home exceeds \$50,000; or b) as part of the \$50,000 where the value of the home does not exceed \$50,000.</p> <p>Residue of estate where children (6) The residue of the estate shall be divided among the surviving spouse and children as follows: a) where the intestate dies leaving a surviving spouse and one child, 1/2 shall go to the surviving spouse; b) where the intestate dies leaving a surviving spouse and more than</p>	<p>"spouse" means a man, where the person who died intestate was a woman, and a woman, where the person who died intestate was a man, who, immediately before the death,</p> <p>a) was married to the person who died intestate, b) was married to the person who died intestate in a marriage that was voidable or void, and had entered that marriage in good faith, or c) was cohabiting, outside marriage, with the person who died intestate, if they i. had cohabited for a period of at least two years, or...</p> <hr/> <p><i>Legislation Act, S.Nu. 2020,c.15</i></p> <p>"spouse" means a person who</p> <p>a) is married to another person, or b) has lived together in a conjugal relationship outside marriage</p>

		<p>one child, 1/3 shall go to the surviving spouse.</p> <p>Children of intestate (7) Where a child of the intestate dies during the lifetime of the intestate leaving issue one or more of whom are alive at the date of the death of the intestate, the surviving spouse shall take the same share of the estate of the intestate as if the child had been living at that date.</p> <p>Distribution to issue of intestate 3 The estate of a person who dies intestate leaving issue shall be distributed per stirpes among the issue, subject to the rights of the surviving spouse, if any. Distribution to surviving spouse where only survivor</p> <p>4 The whole estate of a person who dies intestate leaving a surviving spouse but no issue shall go to the surviving spouse.</p>	<p>with another person, if</p> <ol style="list-style-type: none"> i. they have so lived for a period of at least two years, or... <p>"surviving spouse" means a person who, immediately before the death of another person,</p> <ol style="list-style-type: none"> a) was married to the deceased, or b) had lived together in a conjugal relationship outside marriage with the deceased, if <ol style="list-style-type: none"> i. they had so lived for a period of at least two years, or... <p>Marriage void or voidable (10) If two persons go through a form of marriage with each other in good faith and then live together in a conjugal relationship,</p> <ol style="list-style-type: none"> a) if the marriage is void, they are deemed to be married during the time they so lived together; or b) if the marriage is decreed a nullity, they are deemed to be married until the judgment of nullity is granted
<p>ONTARIO</p>	<p><i>Succession Law Reform Act</i>, R.S.O. 1990, c. S.26</p>	<p>Intestacy where spouse and no issue 44 Where a person dies intestate in respect of property and is survived by a spouse and not</p>	<p>"spouse", except in Part V, has the same meaning as in section 1 of the <i>Family Law Act</i>;</p>

		<p>survived by issue, the spouse is entitled to the property absolutely.</p> <p>Preferential share of spouse 45 (1) Subject to subsection (3), where a person dies intestate in respect of property having a net value of not more than the preferential share and is survived by a spouse and issue, the spouse is entitled to the property absolutely.</p> <p>Same (2) Subject to subsection (3), where a person dies intestate in respect of property having a net value of more than the preferential share and is survived by a spouse and issue, the spouse is entitled to the preferential share absolutely.</p> <p>Same (3) Despite subsection (1), where a person dies testate as to some property and intestate as to other property and is survived by a spouse and issue, and, a) where the spouse is entitled under the will to nothing or to property having a net value of less than the preferential share, the spouse is entitled out of the intestate property to the amount by which the preferential share exceeds the net value of the property, if any, to which the spouse is entitled under the will; b) where the spouse is entitled under the will to property having a net value of more than the preferential share, subsections (1) and (2) do not apply.</p> <p>5 (2) When a spouse dies, if the net family property of the deceased spouse exceeds the net family</p>	<p><i>[Family Law Act, RSO 1990, c M3 “spouse” means either of two persons who, (a) are married to each other, or (b) have together entered into a marriage that is voidable or void, in good faith on the part of a person relying on this clause to assert any right].</i></p>
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		property of the surviving spouse, the surviving spouse is entitled to one-half the difference between them.	
PRINCE EDWARD ISLAND	<i>Probate Act, RSPEI 1988, c P-21</i>	<p>87. Entitlement of surviving spouse, if one child (1) If an intestate dies leaving a surviving spouse and one child, one-half of the estate goes to the surviving spouse.</p> <p>More than one child (2) If an intestate dies leaving a surviving spouse and children, one-third of the estate goes to the surviving spouse.</p> <p>Child died leaving issue (3) If a child has died leaving issue and the issue is alive at the date of the intestate's death, the surviving spouse shall take the same share of the estate as if the child had been living at that date.</p> <p>88. Distribution among issue of child If an intestate dies leaving issue, the estate shall be distributed, subject to the rights of the surviving spouse, if any, by stocks among the issue.</p> <p>89. Intestate succession, surviving spouse but no issue If an intestate dies leaving a surviving spouse but no issue, the estate goes to the surviving spouse.</p>	-
QUEBEC	<i>Civil Code of Quebec</i>	<p>666. If the deceased leaves a spouse and descendants, the succession devolves to them. The spouse takes one-third of the succession and the descendants, the other two-thirds.</p>	<p><i>Loi d'interprétation, RLRQ c I-16</i> 61.1. The word "spouse" means a married or civil union spouse. The word "spouse" includes a <i>de facto</i> spouse unless the context indicates otherwise. Two persons of</p>

		<p>670. The father and mother or the parents of the deceased are privileged ascendants. The brothers and sisters of the deceased and their descendants in the first degree are privileged collaterals.</p> <p>671. Where there are neither descendants, privileged ascendants nor privileged collaterals, the entire succession devolves to the surviving spouse. 1991, c. 64, a. 671.</p> <p>672. Where there are no descendants, two-thirds of the succession devolves to the surviving spouse and one-third to the privileged ascendants. 1991, c. 64, a. 672.</p> <p>673. Where there are no descendants and no privileged ascendants, two-thirds of the succession devolves to the surviving spouse and one-third to the privileged collaterals.</p>	<p>opposite sex or the same sex who live together and represent themselves publicly as a couple are <i>de facto</i> spouses regardless, except where otherwise provided, of how long they have been living together. If, in the absence of a legal criterion for the recognition of a <i>de facto</i> union, a controversy arises as to whether persons are living together, that fact is presumed when they have been cohabiting for at least one year or from the time they together become the parents of a child.</p>
<p>SASKATCHEWAN</p>	<p><i>Intestate Succession Act</i>, 2019, I-13.2</p>	<p>Spouse but no descendants 4 Subject to section 15, if an intestate died leaving a spouse but no descendants, the entirety of the estate shall be distributed to the spouse</p> <p>Spouse and common descendants 5 Subject to section 15, if an intestate died leaving a spouse and one or more descendants, the entirety of the estate shall be distributed to the spouse if all of the intestate’s descendants are also descendants of the spouse.</p> <p>Spouse and other descendants – spouse’s preferential share</p>	<p>2 “spouse” means: a) the legally married spouse of the intestate; or b) an individual who: i. cohabited with the intestate as spouses continuously for at least 2 years; and ii. at the time of the intestate’s death was continuing to cohabit with the intestate or had ceased to cohabit with the intestate within the 24</p>

		<p>6(1) Subject to section 15, if an intestate died leaving a spouse and one or more descendants, and if any of the intestate's descendants are not descendants of the spouse:</p> <ul style="list-style-type: none"> a) if the net value of the estate does not exceed the prescribed amount, the entirety of the estate shall be distributed to the spouse; or b) if the net value of the estate exceeds the prescribed amount: <ul style="list-style-type: none"> i. the spouse is entitled to the prescribed amount and has a charge on the estate for that amount, with legal interest from the date of the intestate's death; and ii. after payment to the spouse of the prescribed amount and interest pursuant to subclause (i): (A) if the intestate died leaving a spouse and one child, 1/2 of the residue of the estate shall be distributed to the spouse; or (B) if the intestate died leaving a spouse and children, 1/3 of the residue of the estate shall be distributed to the spouse. <p>(2) In the circumstances mentioned in clause (1)(b), if a child of the intestate died leaving one or more descendants who survived the intestate, the spouse is entitled to the same share of the estate as if the child had been living at the date of the intestate's death</p>	<p>months before the intestate's death.</p>
<p>YUKON</p>	<p><i>Marriage Act, RSY 2002, c.146</i></p>	<p>74 (6) A common law spouse making an application under this section is barred from bringing an action under the Dependents Relief Act.</p> <p>80 Intestate leaving spouse but no issue</p>	<p>74 Allowance for common law spouse</p> <p>(1) If an intestate leaves a common law spouse surviving the intestate in the Yukon, the court may order that there be retained, allotted, and</p>

		<p>If an intestate dies leaving a spouse but no issue, the person's estate goes to the spouse.</p> <p>81 Intestate leaving issue If an intestate dies leaving issue, subject to the rights of the spouse, if any, the person's estate must be distributed per stirpes among the issue</p> <p>82 Intestate leaving spouse and issue (3) If the net value of the person's estate is not greater than \$75 000, the estate goes to the spouse</p> <p>(4) If the net value of the person's estate is greater than \$75 000, the spouse is entitled to \$75 000, and has a charge on the estate for that sum.</p> <p>(5) After payment of the sum of \$75 000, the residue of the estate goes as follows a) if the intestate dies leaving a spouse and one child, 1/2 goes to the spouse; b) if the intestate dies leaving a spouse and children, 1/3 goes to the spouse.</p>	<p>applied for the support, maintenance, and benefit of the common law spouse so much of the net real or personal estate, or both, of the intestate as the court sees fit, to be payable in the manner the court directs.</p>
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This table is intended for the purposes of providing information and guidance only and is not intended to be relied upon as the giving of legal advice and does not purport to be exhaustive. August 2025.

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