



## COMMON LAW CONTRACTS: A MADE-TO-MEASURE TOOL

By: *The family law team*

The typical Quebec family has changed a lot over time. Twenty years ago only 7.2% of Canadian couples lived together without being married. In 2001, more than 30% of couples in Quebec opted for common law unions. In 2006, the rate of common-law unions reached 34%<sup>1</sup>.

Although many believe that people in common-law unions have the same rights as married couples, this is not the reality.

In fact neither common law partner has any legal obligation to pay support payments to the other partner. If they separate, neither partner can claim support payments. The obligation to pay support payments to a spouse only exists if the partners are legally married. Rules about sharing family property and partnership of acquests to maintain the economic equity of the spouses also do not apply.

Even if a majority of couples choose common law relationships each year, not many people know that no matter how long they live together, common law spouses will never have the same status and rights as married spouses unless the courts or legislators one day decide to reverse this reality. The Quebec Appeals court will soon have the chance to rule on the matter of inequity of the two systems with regard to children.

In this context it is important to advise spouses in common-law relationships of the significance of drafting certain documents such as common-law contracts. Common law contracts<sup>1</sup> are designed specifically for each couple and can cover diverse topics.

The document can inventory the personal property and debts of each partner when they begin to live together.

This inventory is highly recommended and useful if the relationship ends. The common-law contract is also useful to establish each partner's contribution to household expenses. The contract can provide for spousal support payments for both spouses and also specify how assets will be shared if the relationship ends. The document can even specify a category of assets that can be shared irregardless of ownership, such as the residence, furniture, automobiles, RRSP, pension funds or any other asset. The contract can be useful when creating a company, a business or farm operation, granting a loan to one of the spouses, or specifying the couple's parental rights and obligations, and more. Although these contracts are valuable and effective when relationships end, common-law contracts are not well known or understood.

We therefore believe it is essential for all common-law spouses to establish certain rules while they are living together in harmony to avoid certain disagreements if the couple separates.

For more information on this subject you may call Prévost Fortin D'Aoust's family law team and family law specialists.

## SEWER BACKFLOW AND WATER DAMAGES

By: *Frédéric Savard-Scott, lawyer*

In Quebec we are now hearing more about sewer backflow and water damage to residences.

Are you aware that many Quebec cities and municipalities have passed laws requiring the installation of non-return check-valves on horizontal pipes connected to appliances installed in basements of the homes of their citizens?

In general these laws also specify that non-return check-valves to prevent sewage backflow into homes must be installed in a place that is accessible and must always be maintained in good working order.

<sup>1</sup> www.statcan.ca « Family Portrait: Continuity and Change in Canadian Families and Households in 2006, 2006 Census Families and households ca no. 97-553-X2006001.

It is also becoming more common for cities and municipalities to pass laws to prohibit rainwater (from gutters, French drains) from entering municipal sewage drainage systems. In general these laws exist when the city or municipality does not have two drain systems (one for sewage and one for rain water). In this case many cities and towns require that rainwater be drained over the surface and directed into ditches designed for that purpose.

You should check the regulations in your city or town. Respecting these laws can prevent damage to your property. Your insurance contracts may also contain claim limitations but it may be possible to obtain additional or supplemental protection if you follow municipal regulations. You should check this information with your insurance brokers and companies.

## TENANTS, THE END OF THE LEASE DOES NOT END YOUR RESPONSIBILITIES

By: *Jean-François Mallette*, lawyer

Tenants with commercial leases often believe that their financial obligations end with the final rent payment.

However the superior Court, in the matter of *Bernatchez vs. Gestion Louis Besner inc.*, J.E. 2008-813 (C.S.), recently ruled that a former tenant had to pay an amount of sixty thousand dollars (\$60 000) to the owner of the property even though the tenant had paid all of the rent payments owing as per the lease.

**HAPPY HOLIDAYS!!!**

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The lease had specified that the tenant had an obligation to return the rented premises in good condition at the end of the lease. The tenant had operated a dentist's office.

When the tenant vacated the premises, the owner noted that pipes had been cut off at five or six inches from the floor and ends of electric wires had been left where dental chairs had previously stood. During the trial, an engineer and an architect stated that repairs were necessary to restore the premises in order to rent the space again.

The court ordered the former tenant to pay the amount required for repairs to restore the premises to a condition that would allow the space to be rented again.

We invite owners and tenants with leases that are soon to expire to contact us with any questions about their rights and obligations under the terms of their lease.

### NEWS FROM OUR FIRM

- **Me Frédéric Savard-Scott** was elected vice-president of the Club Richelieu de Saint-Jérôme. **Me Frédéric Savard-Scott** has become a member of the l'Ordre honorable de l'Oie bleue international (a charity organization in the field of insurance).
- In May, La Fondation Marc Chouinard inaugurated a new continuous trauma training centre at the University of Sherbrooke. As governor of the Foundation, the firm of **Prévost Fortin D'Aoust** is proud to announce the opening of this training centre. Note that since 1999, the Foundation has also financed the opening of a laboratory at the nursing sciences faculty of l'Université de Montréal.
- **Me Daniel Goupil** has been elected president of Centraide Laurentides' Rivière-du-Nord Cabinet.



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