



#50: February 2026

Law Reform Notes

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Law Reform Notes is produced in the Legislative Services Branch of the Office of the Attorney General. It is distributed to the legal profession in New Brunswick and the law reform community elsewhere, and is available on the Office of the Attorney General's website. The Notes provide brief information on some of the law reform projects currently under way within the Branch, and ask for responses to, or information about, items that are still in their formative stages.

We welcome comments from any source. If any of our readers are involved either professionally or otherwise with groups or individuals who may be interested in items discussed in these Notes, we encourage them to let them know what the Branch is considering and to suggest that they offer their comments.

Opinions expressed in the Law Reform Notes merely represent current thinking within the Legislative Services Branch on the various items mentioned. They should not be taken as representing positions that have been taken by either the Office of the Attorney General or the provincial government. Where the Office or the government has taken a position on a particular item, this will be apparent from the text.

*Responses to the items below should be sent to the address above or to lawreform-reformedudroit@gnb.ca. We would like to receive replies no later than **April 30, 2026**, if possible. We welcome suggestions for additional items which should be reviewed with a view to legislative reform.*

1. Wills and estates legislation

As a first step in our plan to modernize the law on wills and estates, we submitted proposals for amendments to the *Wills Act*. This led to the enactment of [An Act to Amend the Wills Act](#), SNB 2025, c. 43, which received Royal Assent on December 12, 2025. The Act is subject to proclamation to give the legal community and others time to prepare for the changes and so that consequential amendments to the *Probate Rules* and forms can be made. We expect that the Act will come into force by the end of 2026. The Act implements many of the proposed changes outlined in issue #47 (April 2023) of the *Law Reform Notes* and discussed in prior issues.

We continue to work on proposals to update intestacy and other related law found in Part II of *Devolution of Estates Act*, the *Survivorship Act*, and the *Provision for Dependents Act* as set out in issue #47.

Finally, as also mentioned in issue #47, we intend to explore reforms dealing with estate administration once our work outlined above is complete.

2. Jurisdiction and extra-provincial judgments

As discussed in issue #49 of the *Law Reform Notes*, we have been developing proposals for legislation relating to the jurisdiction of New Brunswick courts in civil proceedings and the enforcement of judgments from outside New Brunswick. We have submitted proposals and hope to see legislation introduced in the Legislative Assembly this spring.

We have proposed two Acts, both of which are based on uniform Acts developed by the Uniform Law Conference of Canada (ULCC). The first relates to court jurisdiction and the transfer of proceedings. The second relates to the recognition and enforcement of judgments and orders (including civil protection orders) from other provinces and territories. The tentative titles of the Acts are *Court Jurisdiction and Proceedings Transfer Act* and *Enforcement of Canadian Judgments Act*. They will come into force on a date set by proclamation.

We have also proposed two regulations. The first would be a general regulation under the *Enforcement of Canadian Judgments Act* that would (a) set out details regarding the affidavits that are to be filed when a judgment is submitted for registration in the Court of King's Bench and (b) prescribe a fee for registration. The second would make amendments to the Rules of Court that relate to the jurisdictional rules and transfer procedures set out in the *Court Jurisdiction and Proceedings Transfer Act*.

If the Acts are passed, we will provide information about the posting of draft regulations and the commencement date of the Acts and regulations in the next issue of the *Law Reform Notes*.

We have not yet submitted proposals for legislation relating to the recognition and enforcement of judgments from other countries. We plan to do so after the ULCC has adopted a new uniform Act on this topic, which we expect will happen this August.

3. Non-disclosure agreements

We are considering recommending legislation that regulates the use of non-disclosure agreements (NDAs) in New Brunswick, the overarching goal of which would be to prevent the misuse of NDAs by restricting or limiting their use in relation to the settlement of claims involving certain types of wrongful conduct (e.g. sexual abuse, harassment, discrimination) and by clarifying situations where valid NDAs cannot prevent disclosure (e.g. to law enforcement, treating therapists, etc.).

On a basic level, an NDA is a type of contract, or a provision in a contract, whereby the parties involved agree to keep certain information confidential – they agree to silence themselves. Under contract law, parties are generally free to strike whatever bargain they please; there is “freedom of contract”. NDAs sometimes have legitimate uses such as protecting trade secrets, intellectual property and other confidential business information, the disclosure of which could cause economic harm to its owner. However, NDAs have more recently been used as part of the settlement of many types of disputes – a party usually seeks to suppress information that could expose it to civil liability. In this context, NDAs can potentially be used to conceal criminal or tortious conduct or information relating to public safety.

As a result of the “#MeToo Movement” and other high-profile cases such as those involving Harvey Weinstein and Hockey Canada, there has been an increased awareness and condemnation of the potential misuse of NDAs to cover up harmful behaviour and intimidate or silence survivors of wrongful conduct such as sexual abuse, harassment and discrimination; and there has been a call for governments to enact legislation to address the issue in this context.

The potential misuse of NDAs in improper circumstances has been scrutinized and addressed in Canada in recent years, including the following:

- In 2021, Prince Edward Island became the first Canadian jurisdiction to enact NDA legislation ([Non-disclosure Agreements Act](#), RSPEI 1988, c. N-3.02).
- Since 2022, proposed NDA bills have been introduced in Nova Scotia, Manitoba, British Columbia, Ontario, and in the Senate. These were all private members' bills, and none have passed.
- In 2022, NDAs were restricted in Ontario in post-secondary institutions for situations of sexual misconduct through the [Strengthening Post-secondary Institutions and Students Act, 2022](#), SO 2022, c. 22.
- In February 2023, the Canadian Bar Association passed a resolution to promote the fair and proper use of NDAs, discourage their use to silence victims and whistleblowers reporting experiences of abuse, discrimination and harassment, and advocate for legislation and policies to ensure NDAs are not misused (*Principles to Prevent Misuse of Non-Disclosure Agreements in Cases of Abuse and Harassment*, [Resolution 23-05-A](#)).
- In April 2023, the Uniform Law Conference of Canada (ULCC) formed a working group to examine the need for uniform legislation in Canada to address concerns related to the use of NDAs. The working group issued progress/policy reports in 2023, 2024 and 2025, which can be found under the [Annual Meetings](#) page of the ULCC's website. It is expected that the ULCC will finalize uniform legislation in 2026.
- In June 2023, the Manitoba Law Reform Commission issued a report on [The Use of Non-Disclosure Agreements in the Settlement of Misconduct Claims](#) expressing concerns that legislation to prohibit NDAs would result in a decrease in settlements and recommending against the enactment of proposed Manitoba NDA legislation.

It is readily apparent that the use of NDAs often arises in situations where there is an imbalance of power and knowledge and that their misuse can potentially have detrimental effects on both the individual(s) involved and society in general, including:

- People who are subject to an NDA may feel isolated and may not be able to heal because they (at least believe) they cannot disclose the harm they suffered to family members, therapists or other trusted advisors.
- Those subject to an NDA are often afraid of accidentally breaching the NDA. Wrongdoers thereby effectively exert a level of control forever, exacerbating feelings of powerlessness and helplessness. This can prevent closure and healing and can negatively impact people's lives and livelihoods.
- Because of an NDA, a person may be unable to explain a gap or change in their employment or behaviour that may be triggered due to past trauma.
- Even though there may be ways to challenge their enforceability, people who sign NDAs are often unable or unwilling to do so because of fear, ignorance and the cost of accessing legal counsel.
- The use of NDAs can facilitate repeat wrongdoers as patterns are not identified and exposed.
- NDAs can cause harm to innocent third parties, who may interact with a wrongdoer they would have otherwise avoided had the history of the person's conduct been known to them. By entering into a secret settlement (using an NDA) the parties involved essentially pass the cost on to third parties not at the table.
- The improper use of NDAs contributes to a lack of confidence in the administration of justice by allowing those who may have been responsible for wrongdoing to avoid accountability.

In our view, any reform in this area must recognize both the individual level impacts and the broader social impacts of the use and abuse of NDAs.

To that end, we are considering proposing the following legislative framework for New Brunswick.

Approach

While we acknowledge unequivocally the potential negative impacts of the improper use of NDAs, our view is that, even in the settlement context, NDAs can serve a legitimate purpose – some complainants (i.e. the person who is subjected to the wrongful conduct) value the confidentiality that NDAs provide in the resolution of disputes. Therefore, any potential legislation should respect a complainant's ability to make an informed decision to agree to an NDA as part of a settlement if that is their choice while, at the same time, recognizing that there is often unequal bargaining power and a knowledge imbalance during negotiations and thus appropriate safeguards and other requirements should be in place. The legislation should also make it clear that complainants are permitted to speak about their experiences in certain circumstances despite the existence of a valid NDA. Our view is that targeted legislation can appropriately regulate objectionable NDAs.

Application and scope

We plan to propose that the potential legislation would regulate the use of NDAs in the context of the settlement of disputes relating to certain specified wrongful conduct: discrimination, inappropriate sexual conduct and abuse, harassment (including bullying and violence) and reprisals. While the precise terms to be used and the definitions of these terms would be determined through the drafting process, we would anticipate they (along with the overall scope of the new Act) would generally align with the PEI legislation and what is put forward by the ULCC, adapted for New Brunswick, and would generally be consistent with New Brunswick occupational health and safety and human rights legislation.

For the purposes of the potential legislation, the setting within which the wrongful conduct occurred would not be relevant. While we suspect such conduct may most often occur in the workplace, it could occur in many other situations as well – in universities, sports and service organizations, tenancy relationships, etc.

NDAs subject to the potential legislation would generally include any kind of provision (including non-disparagement clauses, etc.) in any type of written settlement agreement that has the purpose or effect of concealing details or information relating to an allegation or incident of wrongful conduct (within the meaning/scope of the legislation) or which purports to prevent or restrict a party from disclosing such wrongful conduct.

The potential legislation would not prohibit a provision in a settlement agreement that precludes the disclosure of the amount paid in settlement of a dispute.

The legislation would indicate that any NDA (the non-disclosure provision in an agreement) would be void and unenforceable if it does not comply with the requirements of the Act; the impugned provision(s) would be severable from the rest of the agreement (if there is one).

Requirements for validity

The potential legislation would set out certain preconditions that must be satisfied for an NDA to be valid and enforceable. The overall purpose of these requirements is to address the potential imbalance of knowledge and bargaining power while not making it impossible to negotiate a valid NDA if that is the parties' true intention. We are considering the following:

- No undue influence – there must not have been undue influence exerted on a person to enter into an NDA.
- Opportunity to obtain independent legal advice – a person entering into an NDA must be given a reasonable opportunity to obtain and receive independent legal advice. We are considering including a specific “cooling-off” period to give the person signing time to review and consider the agreement and seek legal advice – perhaps to be set at 14, 21 or 30 days.
- Set time and duration – an NDA would be required to have a specified term length.

- Liquidated damages – any clause purporting to require the complainant to pay a penalty or liquidated damages, or to return all or part of the settlement consideration, because of an alleged breach of an NDA would be unenforceable. Damages for breach of contract when a purported breach occurs would continue to be an available remedy.
- Mutuality – NDAs must be mutual and binding on all parties, not only the complainant, unless the complainant elects otherwise.
- Plain language – an NDA is to be written in plain language so that it can be easily read and understood.

Permitted disclosures (non-applicability and exceptions)

For public policy reasons, there are situations where an NDA should not prevent certain disclosures. While some of these situations may already be covered by other legislation or the common law, our view is that the potential legislation should list permitted disclosures so that a complainant is aware of their rights and is able to access support and advice and cooperate with relevant authorities. We are considering the following list of disclosures which would always be permissible, even when there is a valid NDA in place:

- as required or protected by law
- in the course of an investigation (including a workplace investigation)
- to a person qualified to provide medical, health (including mental health), spiritual or other similar services, treatment or support, including counseling services and support groups (we anticipate considering the New Brunswick equivalents of the persons listed in subparagraphs 4(6)(c)(iii) to (viii) of the PEI Act)
- to a person authorized to practise law in Canada, for the purpose of obtaining legal advice
- to law enforcement agencies (including regulatory bodies)
- to prospective and current employers for the purpose of providing information about employment history to obtain or maintain employment, provided the particulars of the wrongful conduct are not communicated
- for research purposes, provided the identities of the other parties are not disclosed, the information shared will be kept confidential by the researchers and any published results are anonymized
- for artistic expression that does not identify the party responsible or the person who committed or is alleged to have committed the wrongful conduct or the terms of the NDA
- to a spouse, common-law partner, parent, sibling, child and any other specific individual named in the agreement, for the purpose of obtaining personal support, provided the person agrees to keep the information shared confidential
- to any other person where that other person's health and safety may be at risk. This would allow a person who entered into an NDA to, for example, warn another person in the workplace to avoid the wrongdoer. The wording of this exception would likely clarify and limit its application – for example, where there is “imminent risk” of such harm or another similar qualification.

The Act would likely specifically allow for information relating to the financial component of a settlement (including the source of funds) to be disclosed to financial, accounting and investment advisors and for tax reporting and other similar purposes.

The Act would also allow for additions to the permitted disclosures list to be made by regulation.

Attaching provisions

The Act would provide that the relevant provisions (likely, at minimum, the validity preconditions and permitted disclosures sections) of the legislation are to be attached to any agreement with an NDA.

Copy of executed NDA

The legislation would stipulate that anyone who enters into an NDA must be provided with a full copy of the executed NDA.

Responsible persons and restricting NDAs with alleged wrongdoers

The scheme set out in the proposed legislation would apply to people or entities who are, at law, responsible for the actions of the wrongdoer and/or responsible for protecting a complainant from wrongful conduct (for example, employers, post-secondary institutions, sports, religious and other organizations, etc.) when they are a party to an NDA with a complainant.

We also recognize that many such persons/institutions have responsibilities under existing law – health and safety, employment standards, privacy, etc. – from which they cannot be absolved through any private agreement.

That said, the legislation would also likely include certain additional provisions that deal specifically with the rights and obligations of such “responsible persons” when they enter into an NDA with an alleged wrongdoer. In such a situation, the NDA is usually designed to prevent the responsible person from disclosing information about the wrongful conduct to, for example, subsequent employers of the wrongdoer. Misuse of an NDA in this context could contribute to the ability of a wrongdoer commit further wrongs. Accordingly, we are considering including provisions that would indicate that despite any agreement, a responsible person is permitted to: (1) conduct an investigation into an allegation or complaint of wrongful conduct, and (2) disclose that an allegation, complaint or substantiated finding has been made against a wrongdoer, provided that when such disclosure is made, the responsible person must also disclose whether an investigation was carried out and the conclusion or result of any investigation and must not disclose the identity of the complainant.

Pre-Emptive NDAs

Some employers (and others) may require that an NDA be signed prior to commencing employment or other relationships. While they may have other legitimate purposes, these “pre-emptive” NDAs may have the effect of preventing signatories from discussing incidents of wrongful conduct which don’t occur until after they signed the NDA. People may sign these documents without a complete understanding of the potential future consequences. We plan to propose that the new legislation include a requirement that, to be valid, an NDA must be entered into after the wrongful conduct in question occurred.

Retrospectivity

We are considering including a provision that an NDA entered into before the Act comes into force is unenforceable to the extent that it attempts to restrict the disclosures permitted under the Act (non-applicability and exceptions disclosures referred to above).

The Act would also provide that pre-emptive NDAs existing before the Act comes into force are unenforceable to the extent they relate to the conduct within the scope of the proposed legislation.

Other rights and remedies not limited

The rights and remedies under the potential Act would be in addition to any other right or remedy that may be available (including under other legislation, in equity and at common law). It is possible that a particular NDA might, for example, be found to be unenforceable because it is contrary to public policy or because, under contract law, there was a lack of proper consent, inadequate consideration, indefiniteness, duress, unconscionability, etc. The pursuit of these types of remedies would not be precluded by the proposed legislation.

Choice of Law

To avoid the potential for “jurisdiction shopping” to circumvent the proposed legislation, we are considering including a provision that would invalidate any choice of law clause which purports to establish that the laws of jurisdiction other than New Brunswick apply to an NDA. This could potentially be accomplished by providing that, despite any agreement to the contrary, an NDA is deemed to be made in New Brunswick (and/or that the potential legislation applies) if the wrongful conduct occurred in New Brunswick or if the complainant or the wrongdoer ordinarily resided in New Brunswick at the time the wrongful conduct occurred, or when the NDA was entered into.

Conclusion

We welcome your comments as to the extent to which the misuse of NDAs is causing problems in New Brunswick and whether the potential framework outlined above to restrict and regulate their use seems appropriate and workable, either generally or with respect to any of the specific topics discussed.

4. Marital Property Act

We have undertaken a new project on the *Marital Property Act*. Our initial work has focused on the question of whether the presumption of equal division of marital property under the Act should be extended to common-law couples. The presumption, which is set out in section 2 of the Act, currently applies to a “spouse”, which is defined as “a married person”. As a result, when a common-law partnership ends, a partner is not entitled to a presumption of equal division of property and instead must apply to the court for division of property (or negotiate a settlement) on the basis of the principles of unjust enrichment.

In several provinces and territories, the presumption of equal division of marital property (or “family property”) has been extended to common-law couples who have lived together for a specified period of time (e.g., two years): British Columbia, Alberta, Saskatchewan, Manitoba, Northwest Territories, and Nunavut. In Nova Scotia, the presumption applies to common-law couples who have registered as domestic partners. In the rest of the country, the presumption does not apply to common-law couples.

This issue has been examined by the Law Reform Commission of Nova Scotia ([Division of Family Property](#)) and the Alberta Law Reform Institute ([Property Division: Common Law Couples and Adult Interdependent Partners](#)). Both recommended that the presumption of equal division be extended to common-law couples.

We are planning to recommend that the presumption of equal division be extended to common-law couples, for the following reasons:

- The presumption of equal division recognizes that married couples form an interdependent economic unit, that financial and non-financial contributions to this unit are of equal importance, and that each spouse is therefore entitled to an equal share of property on marriage breakdown. Common-law couples also generally function as interdependent economic units, and should therefore have the same entitlements as married couples. A common-law partner who is economically disadvantaged by the relationship (usually the woman in a heterosexual couple) should have the same protection as an economically disadvantaged spouse.
- The presumption of equal division makes the outcome of disputes more predictable, which promotes the settlement of disputes. Unjust enrichment claims are unpredictable, which makes settlement less likely. Litigation of unjust enrichment claims is often complex, time-consuming, expensive and risky. This creates a barrier to access to justice for common-law partners, especially those who are economically vulnerable.
- Common-law couples are treated the same as married couples under other New Brunswick legislation (including the *Pension Benefits Act* and the *Family Law Act*) and under federal legislation (including the *Canada Pension Plan*). The differential treatment under the *Marital Property Act* is an anomaly. (We note that recent amendments to the *Wills Act* generally remove

the differential treatment of married couples and common-law couples, and that our current proposals relating to intestate succession would do the same.)

- Many common-law couples mistakenly believe that after a certain number of years of cohabitation they will have the same right to equal division of property as married couples on relationship breakdown. Extending the presumption of equal division to them would align the law with their expectations.
- The benefits of extending the presumption of equal division to common-law couples have grown as the prevalence of common-law couples has increased. In 1981 (which is when the *Marital Property Act* came into force), the proportion of New Brunswick couples in common-law partnerships was 4.1%. By 2021, that number had grown to 22.9%.

The main argument against extending the presumption of equal division to common-law couples is that by choosing not to marry, common-law couples are choosing not to be subject to the equal-sharing regime, and this choice should be respected. The regime should not be imposed on them.

There are a couple of responses to this argument. First, a couple's decision not to marry does not necessarily mean that the couple is choosing not to be subject to equal division of property on relationship breakdown. Many couples choose not to marry for reasons unrelated to division of property. Many couples do not know what the law is or, as mentioned, believe that after a certain number of years of cohabitation they have the same entitlements as married spouses. And in some couples, one person would prefer to be married but the other person prefers to be in a common-law partnership (for reasons relating to the division of property or for other reasons).

Second, if the presumption of equal sharing is extended to common-law couples, couples who would prefer not to be subject to the presumption can opt out by means of a domestic contract. The default rule would be equal division, but couples would retain the ability to choose another arrangement. If a common-law couple does not enter into a domestic contract but the partners remain economically independent, they would be in a position to make a claim for unequal division under the Act or negotiate a settlement on the basis that unequal division would likely be ordered.

We note that extending the *Marital Property Act* to common-law couples is not a constitutional requirement. In *Quebec (Attorney General) v. A*, 2013 SCC 5, a majority of the Supreme Court of Canada found that the differential treatment of married spouses and *de facto* spouses (i.e., common-law partners) under the *Civil Code of Québec* is a violation of section 15 of the *Charter*, but a majority also found either that the violation was justified under section 1 or that there was not a violation of section 15.

Our initial review of the law reform literature and the legislation in other provinces and territories (particularly British Columbia's recently updated *Family Law Act* [BCFLA]) indicates that there are a number of other issues we should consider, including the following:

- The definition of "marital property" in section 1 of the *Marital Property Act* excludes "business assets", which means that business assets are not subject to the presumption of equal division set out in section 2 (unless they have become "family assets" because they have been used by both spouses). Should business assets continue to be excluded from the property that is subject to the presumption of equal division?
- The definition of "family asset" in section 1 of the Act includes property that was acquired by one spouse prior to the marriage if the property is used by both spouses. Such property is therefore subject to the presumption of equal division. Should this continue to be the case, or should previously acquired property be excluded from the presumption of equal division even if it is used by both spouses? If previously acquired property is excluded from the presumption of equal division, should the increase in value of the property be included in the presumption? (See BCFLA, s. 84(2)(g).)
- Section 9 of the Act provides that the court shall "effect a fair and equitable division of marital debts". Should this be changed such that there is a presumption of an *equal* division of marital debts? (See BCFLA, s. 81(b).)

- Section 7 of the Act allows the court to order unequal division of marital property where equal division would be “inequitable”. Is “inequitable” an appropriate standard, or should a higher standard such as “unconscionable” or “significantly unfair” be used? (See *Yorke v. Yorke*, 2011 NBCA 79 at para. 15; BCFLA, s. 95(1).) Section 7 lists the factors that the court is to consider when determining whether to order unequal division. Are there factors that should be added to the list?
- Under section 43 of the Act, the court may disregard any provision of a domestic contract if applying the provision would be inequitable and the spouse did not receive independent legal advice. Should the Act provide for other circumstances in which the court may disregard a provision of a domestic contract? (See BCFLA, s. 93.)
- Should the Act include provisions that deal with pets? (See BCFLA, s. 97(4.1).)
- Should the Act (or the Rules of Court) give the court a greater ability to impose penalties for a failure to comply with financial disclosure obligations?

We invite comments on these issues and on any other aspect of the *Marital Property Act*.