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# Does the FLA Increase Access to Justice for Common Law Partners?

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*Last year, the Law Foundation of British Columbia established a \$100,000 fund to support legal research in British Columbia that advances the knowledge of law, social policy, and the administration of justice. This year's recipients of the fund include three of our faculty members: Isabel Grant ([link to research profile](#) (<http://research.allard.ubc.ca/access-to-justice-hiv/>)), Régine Tremblay ([link to research profile](#) (<http://www.allard.ubc.ca/news-events/ubc-law-news/family-law-act-and-access-justice>)) and Erez Aloni.*



Assistant Professor Erez Aloni

The Family Law Act (FLA) – which came into effect in March of 2013 – sought to establish common law partners and married spouses as equal under the law. Assistant Professor Erez Aloni's research project "Married by Default: Access to Justice for Unmarried Couples Five Years after the FLA" will critically examine whether the FLA increases access to justice for common law partners.

## **The Problem**

Five years after the promulgation of the FLA, Aloni is working to determine whether affording common law partners the same rights and responsibilities as married spouses has increased access to justice.

Pre-2013, common law couples were not held to the same property division obligations as married couples. This changed with the passage of the FLA: as of 2013, separating common law partners are responsible for splitting equally all property and debt accrued over the course of a relationship.

A second change brought about by the passage of the FLA was the introduction of an "opt-out" approach to common law partnership. Under an opt-out system, cohabitating couples who live in marriage-like relationships automatically considered spouses at the two year mark unless they sign a legal agreement stating otherwise. According to Aloni, the goal of an opt-out system is to prevent the exploitation of the economically disadvantaged partner. Aloni explains that in an opt-out system, the onus to avoid the automatic obligations is placed on the economically advantaged partner. Thus, if the economically stronger partner wants to remain in the relationship but avoid equal division of assets, this partner has to disclose his or her intentions and contract out from the default.

## **Why is this important?**

Cohabitation outside of marriage is rapidly increasing: British Columbian couples who live in common-law relationships — defined under the FLA as two people who have lived together in a marriage-like relationship for two or more years or have had a child together — made up 17% percent of all households in 2016, up from 13 percent in 2011 (Statistics Canada, 2017). British Columbia is not unique in this: Canada-wide, the number of non-marital households has increased dramatically between 1981 and 2016. Moreover, this upward trend in unmarried cohabitating couples can also be observed in many countries around the world.

## **The Research**

Aloni and team (which includes Adam Yang Vanzella, PhD candidate in Sociology at UBC and Ryan Brown and Lauren Morris, second year Allard School of Law students) will be interviewing 10-20 cohabitating couples who recently hit the two-year cohabitation mark. "Why have they [the participants in common law relationships] not opted out?" asks Aloni. "Is it just because the process was too onerous? Or did they think 'oh, if the law says we need to share property, then this is how we should behave?'" It is difficult to reject our tendency to observe the default, says Aloni. He expects to see some adherence to the FLA's property division legislation, even amongst partners who have made the decision to opt out. "There is something about the province telling you 'after two years, this is what you're supposed to look like' that communicates a norm and impacts our actions. It's the status quo, a sort of guideline, and people tend to follow the status quo." Aloni also explores whether B.C.'s family law reform made marriage, conventional or by default, the sole legal institution through which relationships are recognized and whether this is desirable. "Criticizing the FLA does not mean there are not benefits. But what you see with the FLA is a menu of options for legal recognition of relationships that is limited to either being single or being married. Are these sufficient choices?" Aloni thinks

that more choice for couples — for example, additional registration scheme that allows couples to easily tailor their obligations — would enable more valuable choice to couples. Part of the project is try to sketch what such a system would look like.

Erez Aloni joined the faculty at the Allard School of Law in 2017. His primary research interests lie in the legal regulation of adult relationships and complex family structures. Aloni’s work stages the family as an institution affected by a broad range of laws, norms, and economic structures. He is particularly interested in investigating laws which impact the composition and well-being of households and families, as well as the effects—socioeconomic and otherwise— those laws have on society at large.

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