

# **Transcript – AM650 Talk Radio Interview**

## **Stirling Faux and Angela Thiele – August 2013**

### **Regarding the new Family Law Act**

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Stirling: Well, hello, and welcome to “The Law Show” here on AM 650. On today's edition of the program, we're going to focus on family law. Oh, yes, this is one that we've been waiting to bring to you, friends. And particularly family law as it pertains to the new Family Law Act and its impact on marriage agreements, children's issues and mediation. And to help us sort it all out, we are delighted to welcome to our studio and to “

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Angela: Thank you.

Stirling: It's good to have you with us. Christine, nice to see you, too.

Christine: Nice to see you, also.

Stirling: Well, tell us a little bit about yourselves. Angela, you're a partner at Lindsay Kenney. Tell us a little bit about your background as a lawyer.

Angela: I have done general litigation all the way through. I have a lot of work in family law as well as some other areas. I've been with Lindsay Kenney about 23 years. I've been a lawyer almost 30. I grew up in Vancouver, went to law school in Vancouver. I really enjoy what I do.

Stirling: And general litigation means you go to court a lot.

Angela: Well, in the family law area, we try not to go to court a lot.

Stirling: Right, right.

Angela: We really do hope people resolve their issues. But, yes, generally there's a lot of court time.

Stirling: All right, Christine, you're not a yet a partner with Lindsay Kenney--

Christine: That's correct.

Stirling: You're an associate with the firm so far.

Christine: Mm-hmm.

Stirling: A rising star. Tell us a little bit about yourself. Are you a Vancouver person, too?

Christine: I am, born and raised on the north shore. And also went to law school at UBC. I started at the firm May 2010 as an articled student and I've been there ever since. So practicing primarily in family law. I'm one of those weird people who wanted to do that before law school. And I also practice in some other areas, other general civil litigation areas.

Stirling: So why did you want to do family law even before you went to law school? What had you leaning in that direction so early on?

Christine: Well, my parents would love me for saying this--they went through a pretty ugly divorce, and I suppose I had an idealistic vision of making a difference.

Stirling: Ah, okay. So personal experience.

Christine: Mm-hmm, and I like the stories.

Stirling: Okay. Well, I'm looking forward to stories from both of you. But there's really a lot on the table on this edition of "The Law Show". And we've been looking forward to doing a show with you on family law. And Angela, tell us about the new Family Law Act in British Columbia. It's literally brand new. It's only been on the books for what, two or three months?

Angela: It came into force in March 2013. We knew about it; we knew what was going to change probably for a good year. It had been in the works with the attorney general since about 2002. BC, I think, everyone felt was a bit behind the times. The statute in BC was anomalous to other provinces.

Stirling: But what did it replace? What was the last family act in BC?

Angela: The Family Relations Act started in 1979.

Stirling: Oh, my.

Angela: And so, there haven't been that many significant changes, even while I've been practicing law. I think the most significant change was that they put in pension legislation as part of it in 1995.

Stirling: So the whole thing was due for an overhaul.

Angela: Definitely.

Stirling: Okay, so now we have it.

Angela: That's correct.

Stirling: What's the big difference in 2013 from the previous family law that we know in British Columbia? What's the big change?

Angela: Well, there's two significant big changes I think everybody would tell you. The first is that common law couples are now recognized as husband and wife with the same property rights as married people always traditionally had.

Stirling: Okay.

Angela: And a lot of people in British Columbia have always thought, oh, well, I'm no different if I live together; I still get a piece of his pension, I still get a piece of this house. But that's never been the case in British Columbia.

Stirling: Really? But why have most of us thought it that way then?

Angela: I think just people, their employer says, "Oh, you can put your common law spouse on your benefit plan after six months."

Stirling: Okay.

Angela: You know, people, they don't have to talk to a lawyer until they have a problem.

Christine: Mm-hmm.

Angela: And a lot of people just assume that if I'm here and I'm contributing financially, even if the house is in your name, I still get a piece of it. Well, the law prior to 2013 is, you have to prove your contribution to something in somebody else's name. You didn't get a piece of their pensions and RSPs automatically.

Stirling: Ah, okay.

Angela: That has all changed. And more particularly, it's changed sort of from the date you start cohabiting. You're not considered legally common law for two years, but you will get a piece of everything from the date you start cohabiting. And then the second big change is that we used to have a system where as you walked into a relationship prima

facie as an intermarriage--prima facie, everything that the other party had was half yours on the day you came in.

Stirling: Right, okay.

Angela: So what this new act has said is what you have going in, you can protect. And you're only going to split what things go up while you're together. So it's for--

Stirling: Oh, so you don't automatically--and I hate to use the word, because it's terribly unromantic--but you no longer forfeit half of what you own or possess by entering into a marriage anymore.

Angela: That's correct. But if you don't take some pretty obvious steps to make sure that you can prove what you had when you walked into this relationship--

Stirling: Ahh.

Angela: You're going to have some difficulty.

Stirling: So the act allows you to do that now.

Angela: That's correct.

Stirling: You can say, Christine, for example, okay, I come into this new relationship with the following, and if you can identify that up front and the other person says, yeah, that's true, then you're good to go based on the new changes, right?

Angela: That's correct. But a lot of people will say, well, I don't really want these new changes, either. I don't want to share appreciation on this particular asset.

Stirling: Okay.

Angela: So there's provisions in the new act that make the entering into an agreement much more effective for people. You know, to actually say to judges, if we entered into an agreement, please don't decide that it's not fair to one of us 10 years later. So big changes in terms of most people will be within a certain framework. They'll say, you know, they'll come in and you'll say, "Well, if these are the facts, this is what's going to apply to you. Now, if you want something else to apply to you, there is some judicial discretion. But do you really want to spend all the money to go to court to see if that judge decides in your favor?"

Stirling: Right, right.

Angela: So that's--and a lot of the problem areas, we had things like gifts from parents and inheritances. Those are all spelled out as being yours. Again, you better document them.

Stirling: Right. But according to the new act, it'd been seen--it's now defined as capable of being yours and yours alone.

Angela: That's correct. And no more tests of, did we use this money for a family purpose, which always caused lots of litigation.

Stirling: Mm-hmm.

Angela: No more arguments about, well, did Mom and Dad give that to both of us? Was that a loan, was that a gift, do we have any documentation? A lot of the areas in which there was dispute, this statute has tried to set out, here's how we're going to solve those problems. You may not like the way the statute solves it, but it's going to be solved. And there's not a lot of incentive to go to court and say to a judge, well, can I fit in this narrow exception of people where you think that's just significantly unfair? And so the impetus was, let's reduce litigation. We'll see how it works.

Stirling: Okay, now, Christine, Angela said straight up when I asked her about her litigation experience, which caused a huge smile. I get the feeling you like going to court. But now, there are--you did say, Angela, "We try as often as possible not to go to court." So Christine, what are the alternative remedies for people in dispute who don't want to go to court; that in fact the system is now appearing to be designed to appeal to?

Christine: Mm-hmm. That's right. Certainly one of the big things with this new act is bigger focus on out of court resolution.

Stirling: Yeah.

Christine: Specifically the act is dealing with things like mediation, arbitration, collaborative family law, and parenting coordinators as well. So all of that is new in terms of actually being referenced in the legislation.

Stirling: Okay, so now this is part of the act. They identify these various categories of dispute resolution. Is it the preference of the courts that you don't show up unless you've really got something important? In other words, the less frivolous nonsense brought before the court, the happier everyone is? Is that the case?

Angela: I think it's fair to say that there are probably more self-represented family litigants in the court than there are people represented by law.

Stirling: Really?

Angela: So the court struggles mightily with people that come to court saying, "Well, we can't decide, so you, judge, please decide." I don't know a lot of lawyers who think that court resolutions are the best things for their clients.

Stirling: Right.

Christine: No.

Angela: And I certainly don't. You know, sometimes you have no choice. You can't mediate something. Normally it's because there are children involved, and you have to ask the court.

Christine: And the other issue is, is the courts are pretty backed up currently.

Stirling: Exactly. There's a sort of chronic shortage of judges and the whole bit, okay.

Christine: Mm-hmm. So if you can resolve it outside of court with a mediator or an arbitrator or a collaborative lawyer, what have you, in a set period of time, and you might be paying a bit of money to do that but at least you're not sitting around waiting for a judge that may never come, at least on that day.

Stirling: So the idea, though, whether it's collaborative law or an arbitration or a mediation process, A., it'll likely cost you less because there's no actual court costs involved, and B., it should expedite some kind of resolution. It's the--you should resolve your differences faster than waiting for a court date, correct?

Angela: Well, we don't really have court costs, in the sense it costs us very little to use a courtroom. But the idea of, if we go into court on a particular day and it's overbooked--

Stirling: Right.

Angela: We can actually, as a lawyer, sit there all day and say to the client, "I'm sorry, we didn't get a judge, and unfortunately, you have to pay me for that day I just sat there."

Stirling: Yep.

Angela: Now what you try to do is use that time effectively and hope you can resolve it while you're waiting for a judge.

Stirling: Mm-hmm.

Angela: And the other thing is that the average judge is really, really good. But they don't have--most of them have a family law specialty. And one of the judges once said to me, "Well, would you ask a stranger what to do with your kids? Well, I'm just a stranger at the corner of Howe and Smythe. Why do you want to ask me how to raise your kids?"

Stirling: Right.

Angela: So let's try to make the decisions ourselves with the aide of some qualified professionals.

Stirling: But you know, this whole category of law is really under the umbrella of emotion, isn't it, because whether we're talking about the net results of a relationship in

terms of accumulated wealth, children, property, all of those other things, and possibly some acrimonious feelings, especially with the children involved, or the emotion at the front end of any relationship; the oohs and ahhs of being in love. So all of the issues involved in family law, I would think--maybe I'm being over-simplistic here, but they are a result of a surplus of emotion. Now am I being a little too analytical here, Angela?

Angela: No, not at all, and one of the most difficult things to be in terms of trying to be an ethical lawyer is having to repeat over and over again, "I know you're angry, I know you're hurt, I know you're upset."

Stirling: Sure.

Angela: "But here's what is going to happen when we go to court, and I don't want to take your money to have a judge tell you what I've just told you." So the hardest part of this in my view is ethics. And sometimes a client comes to you and wants to hear a certain thing, wants to hear you're going to punish her husband's infidelity.

Stirling: Right, yep, yep.

Angela: And the court will give her more because of that. And I have lost clients because I don't tell them what they want to hear, I tell them what they need to hear.

Stirling: Right, right. So if an angry spouse comes to you and there's infidelity allegations flying all over the place, and there's a need for revenge. There's a real visceral anger involved. Well, the court isn't going to provide--even with the most expensive lawyer in town, Angela, the court isn't going to punish somebody for malfeasance, cheating, or whatever. They're going to deal with it in a legal fashion. And that's all that's going to come out of it, isn't it?

Angela: That's correct. And people sometimes want to get on the stand and tell their story--

Stirling: Oh, yeah!

Angela: And, you know, I see a lot of cases where often it's self reps, because the lawyers have said, you know, you don't want to pay me if all you want to go do is beat up on your husband verbally in court.

Stirling: Just read that anger into the record.

Angela: Exactly.

Stirling: Right.

Angela: Exactly.

Stirling: Okay. But what's that famous Mark Twain line about he who represents himself has a fool for a client? I mean, I tend to buy into that. I would be terrified to represent myself in court. No matter what a lawyer might charge, I would feel so alien, so out of my element. No matter how angry and self-righteous I felt, I would just--I think I would be my own worst enemy in that environment.

Angela: You generally are. But the people that want to do it want to do it because sometimes they can't afford a lawyer.

Christine: Of course.

Stirling: Okay.

Angela: But there are those people who are sort of professional litigant-types, and we'll say, "Well, I can get back on my spouse by continuing to take them to court for frivolous matters," and they either have to hire a lawyer themselves or they have to figure out how to do it themselves as well.

Stirling: Yeah, Christine, you have some training in collaborative law. So how do you take a person, an emotionally charged person who's just spitting mad and wants some revenge--how do you take that person and convince him or her that while I understand how you feel--

Christine: Exactly.

Stirling: You're not going to get the satisfaction you're after regardless of how much money you spend. So how do you convince that angry, bitter person to take a collaborative, or mediation approach? Talk them down, as it were, off that really emotional anger high.

Christine: Mm-hmm, well, that's exactly what you're trying to do, for the most part. And I think the biggest thing is gaining the trust of your client. And showing them that you understand why they're emotional. And of course, all of our clients are coming from that perspective, for the most part.

Stirling: Absolutely, sure.

Christine: But really, that's not going to help them in the long run. And there's certain things that are just going to happen whether they like it or not, unfortunately. And it's about dealing with it in the best possible way, and providing the healthiest outcome for their children, if they have children, and even for themselves, and their financial well-being, and their, you know, whether they care about the relationship with their ex or not. But just for all their relationships and their well-being in general.

Stirling: I imagine the persuasive process, though, to both of you, must be tough when some of the--and you even talked about in your own personal circumstances, the acrimony is palpable. It's scary how angry people get at each other. And so to try and

talk them down from that, that really high-strung--I mean, I don't imagine it happens in 15 minutes or less. It probably takes a few sessions, right?

Christine: Sometimes. Yeah, people often get it pretty quickly when you tell them, you know, this is the way it's going to be one way or another, and the realities of the situation. People do often understand it fairly quickly, I think.

Angela: And sometimes you have to say, "Well, you know, I know this was really terrible, but you have two beautiful children and you have a home, you have assets, and we really don't want you to deplete those assets arguing about how unhappy you are."

Stirling: Right, right.

Angela: And sometimes you say, "Well, you know, yeah, he was a real jerk. But my other client here, this is what happened to her."

Stirling: Right.

Angela: And what's interesting sometimes is that sometimes the clients who have had the most difficult personal circumstances rise above them. And other clients, it's just a matter of coping. And if people have kids, you really do focus on, "This is the man you chose you to have children with, this is the woman you chose to have children with, you're going to remain connected to them. You want to make it ugly now, it's going to be ugly for 10 years." You know, I always tell the story about, do you want to be sitting at your child's wedding and not being able to talk to the father or mother of your child, because there's still so much ugliness.

Stirling: Yes.

Angela: And you have to think long-term.

Stirling: Mm-hmm, interesting. Sorry, Christine, we need to take a break, but finish it off here.

Christine: I was just going to say, the other thing is when you mention the potential costs of a long trial, people change their tune pretty quickly.

Stirling: Yeah, well, when you hit 'em in the bank account, you at least have their undivided attention, right? This is "The Law Show" here on AM 650. It's family law show day, and boy, we're just getting started here. We're going to talk about marriage agreements. What?! Marriage agreements with our guests Angela Thiele and Christine Eilers from Lindsay Kenney LLP when we return here on AM 650.

Announcer: This is "The Law Show". There's more of the show still ahead on AM 650.

**PART TWO**

Announcer: Now back to the show. This is “The Law Show”, with Stirling Faux, on AM 650.

Stirling: Welcome back to the program. On this episode of “The Law Show”, we're talking family law. And we're delighted to have a couple of people from Lindsay Kenney LLP in Vancouver with us in studio. Angela Thiele and Christine Eilers are lawyers with Lindsay Kenney LLP. By the way, online you can find a lot more about the firm at [lklaw.ca](http://lklaw.ca). And there's lots of information about our two guests and all they do. I wanted to talk about marriage agreements. Is this part of the new Family Law Act of 2013, this whole marriage agreement thing, Angela?

Angela: No, marriage agreements—pre-nups, commonly called pre-nups, have always been there in the statute, they've always been recognized in the statute. The big difference in the new act is A., judges have less authority to overturn a marriage agreement.

Stirling: Wow!

Angela: And B., because of this change saying what you have when you go in is yours, you really need that marriage agreement to document what you have. Or if you're expecting an inheritance, a personal injury settlement, you need an agreement to document those things. 'Cause all of those things are now outside division if you document them properly.

Stirling: Okay, now here comes my dumb guy question, all right? Now if I'm Brad Pitt and Angelina Jolie, I know about pre-nups, and I've got a platoon of lawyers on both sides are going to hammer out some kind of deal, 'cause there's billions of dollars at stake, potentially, and there's certainly a lot of assets and property and so on. So I get why super successful, super rich, high profile people need marriage agreements, or pre-nups, as they're more commonly known. But why should a person who's like a regular person, doesn't have a lot of money or much claim to fame, why would a regular person need a marriage agreement in 2013?

Angela: Well, it depends on what you call a regular person these days. I mean, people in Vancouver have a lot of equity in their homes, and it's worth a lot. So if you bought a condo five years ago and it's now got \$100,000 worth of equity, are you going to want to share what you've already built up? If you have a private pension plan, you know, are you going to say, well, gee, that's my security. And the act says I would have to share what I put in from now on. Maybe I can get an agreement saying that's going to be mine, because meanwhile my husband to be is going to build an RSP. So in terms of documenting things, the Baby Boomer generation, there's an awful lot of parents coming into us saying, "Would you do an agreement for my kid, because although they don't know it, they're going to get a million dollar inheritance."

Stirling: Okay, stop it right there. And you both know this, because I just told you this during the break. Christine, my daughter got engaged last weekend. And she's just thrilled. She's just cross-eyed crazy thrilled. And she's in her early thirties. The young

man involved is a year or so older. A nice guy. And so she's got a nice job and a career, not a lot of assets, neither does he. There's not a lot of property involved. And yet, you both kind of would think that she should have some kind of marriage agreement. So I'm the dad, and there are a lot of Boomer dads listening to this right now. So when our son or daughter says, "Hey, I'm getting married, come on over and meet my sweetie." Okay, we're going to have that conversation, I'm supposed to take my daughter aside in the next weeks or months ahead and go, "You know, you really should consider a marriage agreement." And she's going to look me straight in the eye, Christine, she's going to say, "Dad, how incredibly unromantic of you!" And I'm supposed to get past that and go, "Okay, fine, I get that, I'm truly being unromantic. But you really need to consider a marriage agreement." Christine, why?

Christine: Well, I mean, it's not necessarily the case that everybody needs a marriage agreement. If two people are going into a relationship and neither of them have very much debt and neither of them have much in the way of assets, then the provisions of the Family Law Act are probably going to work for them down the road. However, that requires you to really know about your partner's assets and debts. Under the new act, debts are also divisible. And so if your daughter's fiancé has, you know, \$100,000 in law school debt, for example, you would want to make sure that that is not divisible at the end of the day. And under the new act, it wouldn't be, but you just want to make sure that it's properly documented. Credit card debt is probably even worse, just because you can continue to increase it over the course of the relationship.

Angela: And how do you prove what was there when the relationship started in terms of debt?

Stirling: Sure, if you don't have it documented. But you would agree with me, at least, Angela, that her--and she would, I know it, she'd look me straight in the eye and go, "Dad! How unbelievably unromantic, what are you thinking?! Why, I just got engaged!" Flash flash with the sparkly ring and all that ooh la la stuff. And, you know, god bless her, she's a wonderful person. And truly in love and unbelievably happy. But then there's a lot of emotion going on here. And as we've already identified in this conversation, a lot of the problems dealing with family law come from a surplus of emotion.

Angela: Well, and the thing is, you don't have to necessarily have it going into the relationship. But let's say in a year or two, the kids come to you or your wife and say, "Mom and Dad, could we have 50,000 for a down payment?"

Stirling: Gulp.

Angela: And you say, well, you know, the back of your mind is going to go, well, you know, I don't mind giving it to my daughter, but I'd really like to make sure if something happens to the two of them, she gets it back.

Stirling: Right.

Angela: So people can sign marriage agreements into--as a relationship moves along, as things change. So you get an inheritance, and you say to your spouse, well, you know what, I'd just as soon like to keep my inheritance for the kids. I've got an inheritance from my family. If anything happens, I want to make sure that goes to my kids. You probably want to put it in writing. And we understand from the statistics that millions of dollars are going to be flowing from inheritances from the Baby Boomers down to their kids in the next few years.

Stirling: Untold millions of dollars, absolutely.

Angela: So it's certainly something that the parents, you know, I have two kids and I can tell you that if I was handing over a down payment, I'd want to be sure that they had a marriage agreement.

Stirling: Well, you know, and it's this whole emotional quotient in family law. Because if two 30-year-olds were going to start a business enterprise together, they would put all of the cards on the table. Each would know what each other was going to contribute to the enterprise, and there would be a contract, it would be spelled out, lawyers would approve it, everything would be ratified by both parties, and we're off to the races. Now, this is just a business enterprise that may or may not make a buck. And we're talking instead about, oh, I don't know, a lifetime partnership that somehow or another is dealt with on an emotional level that almost frowns on those sorts of details that we would do nothing without in a business arrangement, Angela. That's a strange dichotomy, isn't it?

Angela: Well, people are more awkward talking about money than sex. So if you and your fiancé are forthright and disclose things to one another about what you like in bed, why wouldn't you disclose things about how you handle money? And they may not get into actually writing an agreement, because we may say to them, you don't need it. But we have a questionnaire we give to people saying, fill this out and tell us what you have and what you want to protect. So even if they took that question--you know, phoned us up or took off our website the questionnaire and did it and sort of sat down with one another and said, "Oh, I didn't know you still owed that student loan."

Stirling: Ah. So is this on the website right now, this questionnaire that people--can they go to [lklaw.ca](http://lklaw.ca) and pull it up and have a look at the kinds of criteria that you lawyers would look at in terms of parameters within which to draft a marriage agreement?

Christine: I don't think so.

Angela: Well, I've prepared it, I'm not sure I put it on the website. So I send it to all my clients, and we do have certain things on the website. We have a [divorce questionnaire](#) that people can pull off and it gives us all the information we need if they need a divorce.

*(Note: [Cohabitation Questionnaire](#) can now be found on the website. Further family law information and links can be found on the [Family and Matrimonial Law & Litigation](#) page.)*

Stirling: Okay.

Angela: But the cohabitation marriage agreement questionnaire is something that I've recently developed, and I suppose there's no reason not to put it on the website.

Stirling: Well, I hope you do. And if not, I would direct people to [lklaw.ca](http://lklaw.ca) anyway and hit the "contact us" button and find Angela or Christine's phone number to follow up on this. Again, especially, not only if you're, like my daughter, a young person madly, crazily in love and going to get married some time next year. But if you're a parent watching all this go down with a little bit of concern. We're always concerned about our children's well-being. And you don't want to be accused of meddling or being unromantic or any of that stuff. But still, parents have a role to play in all of this. So even if the young lovebirds don't want to entertain this notion right now, at least moms and dads should know about it, don't you think, Angela?

Angela: Well, I certainly think that a mom or dad who's being asked to contribute to a down payment--

Stirling: Or even the wedding itself can cost a few bucks.

Angela: Exactly.

Stirling: I'm struggling with that one myself these days.

Christine: Or if, I mean, a parent as part of their estate planning, has put their daughter or son as a beneficiary of a trust, for example.

Stirling: Yes.

Christine: Then their interest in the trust, well, that would be an excluded asset. Any increase in value would be a family asset, unless you have an agreement to make sure that it's not. So it's a bit complicated how that works. But you would definitely want to document that to make sure--

Stirling: It seems to be, because--and I'm taking the devil's advocate position here only because I know my daughter is going to be so on my case when she listens to this show, "How could you, Dad?!" But it seems to be almost a road map for failure, in the sense that, well, we've got this agreement now. So if everything blows up in our faces, then, well, we can just walk away. It's all in black and white, and shake hands and have a nice day and Bob's your uncle. It doesn't cater to the emotional romanticism of it all, does it?

Angela: Well, you can look at it two ways--one is, it's not romantic to do it, but it's really not romantic to think about what might happen if your marriage breaks down and you don't have one. So if you're practical and pragmatic and you look at it as, you know, this is just part of the things we talk about when we're getting married. I think I told you before the break that I got married to a guy and didn't know that he didn't want children. And fortunately, I married somebody else who did and have two children.

Stirling: Right, right.

Angela: But I still can't believe, 30 years later, that I married someone without having that really important discussion.

Stirling: And you didn't. And yet, some of your siblings and even your mom had a conversation with that fellow, and they knew that he didn't want children. And you, the spouse, hadn't a clue. Isn't it funny what emotion does, how it clouds our judgment, how so many of us are in love with being in love because of the euphoric quotient that it delivers to your life. There's nothing quite like floating a few feet above the ground on Cloud Nine. But eventually it does go away. And I hate to be the bearer of bad tidings for my daughter, but eventually life returns to some kind of normal. And I guess what I'm asking about with this whole business of the marriage act, how many people do you think listening to us right now are even aware of the fact that there is a marriage agreement possible for any two people in British Columbia at any time?

Angela: I'd be surprised if it was more than 25 percent.

Stirling: I am, too. I would be, too. I just don't think it's something many of us know about. And it's been on the books for a while, hasn't it?

Angela: Yeah, and one of the reasons why it's just particularly necessary with this new statute is it's hand in hand with what you have now, you better protect as you're going into a relationship.

Stirling: Right, because the act has changed. The ground rules have changed here.

Christine: That's right.

Stirling: So in order to recognize that as a person getting into some kind of relationship, it's important to know the rules. And how you can play safely by the rules.

Angela: And then the last thing is, you know, people cohabit in a fairly casual fashion. What is cohabitation? You know, am I sleeping over five nights out of seven? When did that start? So if you have to look back at when did you start cohabiting, there are a lot of arguments about when did that occur. And people's, for example, pensions. You know, these defined benefit pensions is fairly valuable.

Stirling: Yes.

Angela: You know, another year's worth of pension entitlement, it means money to people.

Stirling: Absolutely.

Angela: So they argue about, when did we start living together?

Stirling: Hmm. So again, if you write it all down up front, it doesn't have to take the romance out of it all, but there's a practical side to all of this, too. That a lot of us are reluctant to go there 'cause it's awfully fun being in love. Our topic on this edition of "The Law Show" here on AM 650 is family law, with the incredibly capable assistance of Angela Thiele and Christine Eilers from Lindsay Kenney LLP in Vancouver. And we're back with lots more right after this.

Announcer: There's more of the show still ahead. This is "The Law Show", on AM 650.

### PART THREE

Announcer: Now back to the show. This is "The Law Show" with Stirling Faux, on 650.

Stirling: Welcome back to the program. Angela Thiele and Christine Eilers are with us, attorneys from Lindsay Kenney LLP. We're talking family law on this episode of "The Law Show". And we wanted to get into, in this portion of the program, the whole matter of children's issues. You both, Christine and Angela, alluded to disputes and how the best interest of the children is a consideration at all times, and how children, in any kind of a break-up of a relationship are, well, they're collateral damage, to use a really awful term. And Christine, you've been there personally. So what do we mean when we're talking about children's issues as it pertains to family law? What are children's issues?

Christine: Well, there's a whole bunch that are dealt with under the new act. Guardianship is sort of the main concept, which is really responsibility for the children.

Stirling: Okay.

Christine: And so, parents who live together at the time the children are born are going to be presumed to be guardians, which means that they have all the responsibilities and rights that come with raising a child, or that particular child. A parent who doesn't live with the child at the time that the child is born will not be presumed to be a guardian under the new law. Which basically means that if mom has child and the dad's not living there at the time, and then the mom will be presumed to be a guardian, but the dad won't be under the new law.

Stirling: Interesting. Now, would that then preclude the dad from being even identified on the child's birth certificate?

Christine: The father would still be the father on the birth certificate. So it's not parentage that that's dealing with, but it's rather guardianship. So it's responsibility for the child.

Stirling: So what if, now Dad, he's split. He's no fun and he's no help. And so he experiences some remorse and comes back to the relationship after baby has arrived. And poor Mom's struggling, and so Dad recognizes, okay, I got to get back into this. So can he just sort of walk back in and, "I'm the dad now!" Or, according to this new law, are there some hoops he has to go through?

Christine: Absolutely. Unless there's an agreement, that father would have to apply to court and complete an affidavit, attaching criminal records checks, administrative children and families record checks, and documenting incidents of family violence. It's quite a comprehensive affidavit. And basically--

Stirling: So he can't just walk in and be a dad, he actually has to prove that he's fit to be a dad.

Christine: Well, he could still potentially have what's called contact under the new law. It's replaced the term "access" with the child. So that's basically visitation with the child. But he has no real rights and responsibilities in terms of, for instance, if the mother wanted to move out of the jurisdiction with the child, she wanted to move anywhere, a parent who doesn't have guardianship has no right to object to that move.

Stirling: Ahh.

Christine: So it's got some really serious implications, not being a guardian.

Stirling: Okay. So in addition to guardianship issues that Christine has identified, Angela, what else--what other items are there under the general heading, Children's Issues.

Angela: Well, one of the things in the new act is a codification of the case law on mobility--when you can move, what factors should the courts look at. Mobility disputes are the most heart-wrenching. I've done a few of them, they're not fun. The parents, there's no--no one's going to win. The parent that is required to stay here when they want to go get a new job in Toronto isn't going to be happy. The parent who sees their child going across the country, and sometimes across the world--

Stirling: Mm-hmm. Well, we're a very international city, and a very multicultural province. And it wouldn't be a shock at all for someone to relocate to Taiwan or Singapore or Africa, for crying out loud.

Angela: Well, the famous case in the Supreme Court of Canada, a parent wanted to go to Australia. So the Supreme Court of Canada said, "Well, here's the factors you have to look at." Our provincial statute has said, let's try to put some of these factors in a list for the judges so it makes it a little easier for them to consider which factors should be the most important." That's a change in our law, and I think it's a good change to provide a list. Unfortunately, it's probably not going to stop those disputes showing up in court.

Stirling: Right. I've got to ask you about something, and this perhaps I'm showing my lack of connection to 2013 law. For example, the fact that this new family act in British Columbia has been proclaimed within the last few months; I'm afraid I didn't know that until about an hour and a half ago. So--and I don't think I'm too out of whack with the rest of people living in BC. So help me out with this one. Angela, why don't you take this one on. I have a sense, a perception, probably erroneous, but I have a perception nonetheless, that when it comes to finding in a legal case involving a dispute over child

custody or guardianship or whatever, the courts have typically and traditionally found in favor of the mother. The natural, nurturing parent. And have given shorter shrift to the father. There seems to have been a sort of bias in the courts towards the mother. Over time, has that changed, is that still the same, or was there bias there in the first place?

Angela: Well, I've been practicing about 30 years, and I think the difference is the family relationships were perhaps a little different 30 years ago. Women could afford to stay home and raise their family. And so courts would tend to say, "Well, if you chose the mother to be the primary care giver, then after separation, that should probably continue." So probably the first 10 or 15 years of my practice, you were still getting dads having every second weekend and a Wednesday night visit.

Stirling: Sure.

Angela: That started to shift basically because society started to shift. You needed two parents working; children were often in childcare, parents were doing, both taking parenting roles. And the court sort of recognized, as did society, that when a marriage breaks down, there's no reason to favor one parent over the other just because they happened to give birth to a child. It's really difficult. I've got kids, I will say to a parent who says--a mother who usually says, "But I'm the mom." And I'll say, "Yeah, that's right. But when you chose to have children with this man, you gave him equal rights to you. And if you can't tell me that he's a bad dad, other than the, you know maybe he forgot my daughter's birthday was on the seventh rather than the ninth."

Stirling: Right, right.

Angela: But it's a difficult emotional response for a mom to be told, well, no, likely if you're both capable and your jobs allow it, you both will have the children half-time. You know, week on, week off, younger children, sort of two days, two days, and then every second weekend. You know, I think having dads stay in the picture is better for kids. All the statistics tell you that parents that managed to parent together after separation amicably, the children are better off.

Stirling: Absolutely, yeah.

Angela: So one of the things they say is that divorce doesn't harm children, but acrimony harms children.

Stirling: Right.

Angela: So I think the judges, the divorce act says maximum contact for both parents as practicable. The new act says, just look at the best interests of the children. And the best interest of the children is to have two involved parents.

Stirling: Well it's interesting, you know, Christine, because Angela's talking about her 30 years as a practicing attorney, and the changes in society that have occurred in that

time. You're fresh out of law school, relatively speaking, and now your caseload could very easily involve subjects that, when Angela was in your position, didn't exist.

Christine: Absolutely.

Stirling: Like same sex couples as parents, surrogate parents. There's an actor in California who this week was a sperm donor and now wants paternal privileges and recognition and status. I mean, all of this stuff, 20, 30 years ago, it was fantasy. It was the stuff of Hollywood movies. It's real life in 2013. Does the new act cover some of these relatively fresh topics?

Christine: It really does, quite extensively, actually. It talks about parentage for any assisted reproduction-type scenario. And really clarifies the law around who are actually going to be the parents of that child, when there's a donor or when there's a surrogate. And parents can still make agreements and sort of contract out of what the law says is going to be the default position. But there's a lot of clarification in there, and really, sort of anticipating that technology might change or that science might change, and there may be other things that come up in the future as well.

Stirling: Right. And this is all the more reason, friends, as you listen to this program today, and we've still got another segment to come. But, you know, with the changing social realities in which we all live, clearly the law, and they're doing a pretty good job in BC at least of catching up in most areas with the new act of 2013, but there are all the more reason to need or to recognize the value of a lawyer in situations along the way, which can be whether it's something as simple as a marriage agreement before everything begins. All of these steps can be taken really do end up allowing people to advance, I think, a little more easily. And if you need to find out more about some of the services that our guests and their colleagues at Lindsay Kenney LLP offer, please go to their website. We're going to take a break right now and give you a couple minutes to blast over to the computer and check out [lklaw.ca](http://lklaw.ca). And we'll catch you on the other side after this.

Announcer: This is "The Law Show." There's more of the show still ahead on AM 650.

#### PART FOUR

Announcer: This is "The Law Show" on AM 650. Now back to the show.

Stirling: Good to have you with us on this episode of "The Law Show". Christine Eilers and Angela Thiele with Lindsay Kenney LLP in Vancouver, our guests. We're talking family law on this program. And I wanted to return to a subject that we've touched on a few times through the conversation so far. And that's this whole matter of cohabitation. Living together, living in sin, as it used to be known back in the sixties. And people still do. A lot of people forego the formalities of marriage and have long, successful relationships. Are the rules--oh, first of all, we talked about the new act and how it recognizes cohabitation. What's the timeline? How long do you have to live with

someone before the law recognizes you as being cohabitants, and therefore equal to equal distribution of assets under the law?

Angela: Two years.

Stirling: Two years. Okay, so what about a situation in which you co-habit with a person who has children from a previous relationship? How does that alter the landscape, if at all?

Angela: Well, you take on an obligation, a financial obligation, for that child after one year--

Stirling: Oh.

Angela: Of, in essence, directly or indirectly supporting that child. So if you prima facie as a step-parent--

Stirling: Right.

Angela: And the natural father, who's really supposed to pay for those kids, he makes 20,000 and you make a hundred, well, you've just taken on the child support difference if the marriage breaks down, between 20 and 100,000.

Stirling: So the law is, even though they're not prepared to recognize our relationship as being a cohabitation situation until after two years, where children are involved, the law makes an exception because of the children, I'm assuming, Christine. That's why the exception, to make sure those kids are looked after.

Christine: Yeah, I would say that that's the reason for it.

Angela: And I forgot, of course, that cohabitation doesn't have to be two years if you've had a child together.

Christine: For the purposes of spousal support.

Stirling: Ah, oh, okay. So if you're just living together, no children, two years after that beginning, the law recognizes it as a formal legal relationship. But if there are children produced in less than two years, than the recognition is advanced to the birth of the child.

Angela: For certain purposes.

Stirling: Okay.

Angela: So for certain legal issues, if you have a child in that first two years, you will be recognized and be given certain rights that you didn't otherwise have before.

Stirling: Right. What about children's rights? I mean, Shakespeare wrote about bastard children, and we always--society over millennia has seen fit to look down its collective nose at children who are "illegitimate." That's a very antiquated concept in 2013. Is it the same in law? Has the law gotten way past of all those crazy old slogan and notions?

Angela: The law got past that in 1984 or so with the Charter of Rights and Freedom, so yeah, you're very antiquated.

Stirling: Well, you know, again, so are a lot of people in British Columbia who doesn't spend a lot of time around law books or lawyers. We don't know these things. So, you know, I don't know, I thought it was a fair question to ask. I mean, I know it's old school. And some of the language was bizarre. But, I mean, there's still a societal attitude out there that's still troubling. Not as widespread as once, but in certain cultures particularly, it's still quite prevalent.

Angela: And certainly when I started practicing law, you were having people come in--it used to be that if you had an illegitimate child, you could agree to pay very little in child support, and those agreements were binding.

Stirling: Yes.

Angela: And so the parents, you know, when the Act--the law changed in '84, I was a young lawyer, I had a number of parents coming into me saying, "I got this agreement because some social worker back when I was a teenager said, 'Well, he's going to pay you \$5,000, and that's all the child support you're ever going to get.' Are these enforceable now that we've got this new Charter and Rights and Freedoms, and I happen to know the father of my child now makes \$100,000 a year?"

Stirling: Right.

Angela: So that's why I know so well when it changed, because I was involved in some of those cases in the early days.

Stirling: I wanted to ask you, this is kind of off track, but it's still under the general heading of family law. And we mentioned this, Christine, earlier a few moments ago, given the relative freshness that you bring to the firm just out of school and such, and some of the cases that you're dealing with were unheard of even ten years ago. Now we all know about same sex couples and marriage, in certain jurisdictions. So clearly, the downside of that is going to be same sex couples divorcing. Have you experienced, either of you in your practice, experienced this yet?

Angela: Well, in fact, after we leave here, I'm going to go swear an affidavit for a same sex wife who is claiming a divorce, and then you have same sex couples with children--

Stirling: Exactly, yes.

Angela: Those cases have been around for a few years, because it's this question of, well, I happened to give birth to the child as one part of the same sex couple, but we were no different than husband and wife.

Stirling: Right. Does the law see it that way, too?

Angela: Generally it does, yes.

Stirling: Okay.

Angela: You have the same rights as the sort of supportive parent as the parent who gave birth to the child.

Christine: And that's been codified under the new law.

Stirling: Okay, right.

Angela: But we've actually had cases where two gay couples, I think it went, two gay couples, the one woman gave birth to a child for the male half of the same sex--a male same sex couple, and then they were supposed to provide sperm so they could have one. And they were sort of raising this child as a foursome. And the courts had to consider that. I think that was in Alberta.

Stirling: Oh, boy. That would be a tough one to unravel. What about grandparents? Only a couple minutes left here, but I wanted to make sure that grandparents, under the new law, it's only a couple months old, are there any improvements for grandparents who will become alienated through break-ups of relationships? They're still the grandparents to these gorgeous little children, and all they want to do is to see them, and to have access to them and hug them, and sometimes there's, oh, just World War III breaking out, and the grandparents are the first casualties of the whole thing. Has the law at all accommodated grandparents in any greater way, with the new act?

Angela: The new act language is virtually the same. I mean, if your child, you know, the father is getting access to the children, you're supposed to exercise your rights to see the kids during dad's time. Where grandparents have always had a right and been fairly successful in the court is if the parent, their son or daughter perhaps has a drug addiction or some reason why they can't see the child. Grandparents have always been pretty successful in going in and saying, "Well, we want to keep the family ties. And we recognize you don't want this child in the custody or in the parenting time with this addicted--"

Stirling: Irresponsible individual, sure.

Angela: But there's nothing irresponsible about us. We love the children; we'd like to have some time.

Stirling: And they're our grandchild.

Angela: And their grandchild, exactly.

Stirling: Right, okay, so there are accommodations that can be made.

Angela: And the court's being relatively, I think, has been quite welcoming to a grandparent who says, "Look, everybody wants to be here to love this child. Why wouldn't you give me time so that we can prove that our side of the family still loves you, even if dad has got some problems."

Stirling: Always nice to end the program on a positive note. And that was a nice one to do. Well done. Angela Thiele and Christine Eilers from Lindsay Kenney LLP, thank you both for coming, and just a fantastic conversation. Let's do this again. We'll see you next time on "The Law Show".

”, Angela Thiele and Christine Eilers, both from Lindsay Kenney LLP in Vancouver. Angela, welcome.

Angela: Thank you.

Stirling: It's good to have you with us. Christine, nice to see you, too.

Christine: Nice to see you, also.

Stirling: Well, tell us a little bit about yourselves. Angela, you're a partner at Lindsay Kenney. Tell us a little bit about your background as a lawyer.

Angela: I have done general litigation all the way through. I have a lot of work in family law as well as some other areas. I've been with Lindsay Kenney about 23 years. I've been a lawyer almost 30. I grew up in Vancouver, went to law school in Vancouver. I really enjoy what I do.

Stirling: And general litigation means you go to court a lot.

Angela: Well, in the family law area, we try not to go to court a lot.

Stirling: Right, right.

Angela: We really do hope people resolve their issues. But, yes, generally there's a lot of court time.

Stirling: All right, Christine, you're not a yet a partner with Lindsay Kenney--

Christine: That's correct.

Stirling: You're an associate with the firm so far.

Christine: Mm-hmm.

Stirling: A rising star. Tell us a little bit about yourself. Are you a Vancouver person, too?

Christine: I am, born and raised on the north shore. And also went to law school at UBC. I started at the firm May 2010 as an articulated student and I've been there ever since. So practicing primarily in family law. I'm one of those weird people who wanted to do that before law school. And I also practice in some other areas, other general civil litigation areas.

Stirling: So why did you want to do family law even before you went to law school? What had you leaning in that direction so early on?

Christine: Well, my parents would love me for saying this--they went through a pretty ugly divorce, and I suppose I had an idealistic vision of making a difference.

Stirling: Ah, okay. So personal experience.

Christine: Mm-hmm, and I like the stories.

Stirling: Okay. Well, I'm looking forward to stories from both of you. But there's really a lot on the table on this edition of "The Law Show". And we've been looking forward to doing a show with you on family law. And Angela, tell us about the new Family Law Act in British Columbia. It's literally brand new. It's only been on the books for what, two or three months?

Angela: It came into force in March 2013. We knew about it; we knew what was going to change probably for a good year. It had been in the works with the attorney general since about 2002. BC, I think, everyone felt was a bit behind the times. The statute in BC was anomalous to other provinces.

Stirling: But what did it replace? What was the last family act in BC?

Angela: The Family Relations Act started in 1979.

Stirling: Oh, my.

Angela: And so, there haven't been that many significant changes, even while I've been practicing law. I think the most significant change was that they put in pension legislation as part of it in 1995.

Stirling: So the whole thing was due for an overhaul.

Angela: Definitely.

Stirling: Okay, so now we have it.

Angela: That's correct.

Stirling: What's the big difference in 2013 from the previous family law that we know in British Columbia? What's the big change?

Angela: Well, there's two significant big changes I think everybody would tell you. The first is that common law couples are now recognized as husband and wife with the same property rights as married people always traditionally had.

Stirling: Okay.

Angela: And a lot of people in British Columbia have always thought, oh, well, I'm no different if I live together; I still get a piece of his pension, I still get a piece of this house. But that's never been the case in British Columbia.

Stirling: Really? But why have most of us thought it that way then?

Angela: I think just people, their employer says, "Oh, you can put your common law spouse on your benefit plan after six months."

Stirling: Okay.

Angela: You know, people, they don't have to talk to a lawyer until they have a problem.

Christine: Mm-hmm.

Angela: And a lot of people just assume that if I'm here and I'm contributing financially, even if the house is in your name, I still get a piece of it. Well, the law prior to 2013 is, you have to prove your contribution to something in somebody else's name. You didn't get a piece of their pensions and RSPs automatically.

Stirling: Ah, okay.

Angela: That has all changed. And more particularly, it's changed sort of from the date you start cohabiting. You're not considered legally common law for two years, but you will get a piece of everything from the date you start cohabiting. And then the second big change is that we used to have a system where as you walked into a relationship prima facie as an intermarriage--prima facie, everything that the other party had was half yours on the day you came in.

Stirling: Right, okay.

Angela: So what this new act has said is what you have going in, you can protect. And you're only going to split what things go up while you're together. So it's for--

Stirling: Oh, so you don't automatically--and I hate to use the word, because it's terribly unromantic--but you no longer forfeit half of what you own or possess by entering into a marriage anymore.

Angela: That's correct. But if you don't take some pretty obvious steps to make sure that you can prove what you had when you walked into this relationship--

Stirling: Ahh.

Angela: You're going to have some difficulty.

Stirling: So the act allows you to do that now.

Angela: That's correct.

Stirling: You can say, Christine, for example, okay, I come into this new relationship with the following, and if you can identify that up front and the other person says, yeah, that's true, then you're good to go based on the new changes, right?

Angela: That's correct. But a lot of people will say, well, I don't really want these new changes, either. I don't want to share appreciation on this particular asset.

Stirling: Okay.

Angela: So there's provisions in the new act that make the entering into an agreement much more effective for people. You know, to actually say to judges, if we entered into an agreement, please don't decide that it's not fair to one of us 10 years later. So big changes in terms of most people will be within a certain framework. They'll say, you know, they'll come in and you'll say, "Well, if these are the facts, this is what's going to apply to you. Now, if you want something else to apply to you, there is some judicial discretion. But do you really want to spend all the money to go to court to see if that judge decides in your favor?"

Stirling: Right, right.

Angela: So that's--and a lot of the problem areas, we had things like gifts from parents and inheritances. Those are all spelled out as being yours. Again, you better document them.

Stirling: Right. But according to the new act, it'd been seen--it's now defined as capable of being yours and yours alone.

Angela: That's correct. And no more tests of, did we use this money for a family purpose, which always caused lots of litigation.

Stirling: Mm-hmm.

Angela: No more arguments about, well, did Mom and Dad give that to both of us? Was that a loan, was that a gift, do we have any documentation? A lot of the areas in which there was dispute, this statute has tried to set out, here's how we're going to solve those problems. You may not like the way the statute solves it, but it's going to be solved. And

there's not a lot of incentive to go to court and say to a judge, well, can I fit in this narrow exception of people where you think that's just significantly unfair? And so the impetus was, let's reduce litigation. We'll see how it works.

Stirling: Okay, now, Christine, Angela said straight up when I asked her about her litigation experience, which caused a huge smile. I get the feeling you like going to court. But now, there are--you did say, Angela, "We try as often as possible not to go to court." So Christine, what are the alternative remedies for people in dispute who don't want to go to court; that in fact the system is now appearing to be designed to appeal to?

Christine: Mm-hmm. That's right. Certainly one of the big things with this new act is bigger focus on out of court resolution.

Stirling: Yeah.

Christine: Specifically the act is dealing with things like mediation, arbitration, collaborative family law, and parenting coordinators as well. So all of that is new in terms of actually being referenced in the legislation.

Stirling: Okay, so now this is part of the act. They identify these various categories of dispute resolution. Is it the preference of the courts that you don't show up unless you've really got something important? In other words, the less frivolous nonsense brought before the court, the happier everyone is? Is that the case?

Angela: I think it's fair to say that there are probably more self-represented family litigants in the court than there are people represented by law.

Stirling: Really?

Angela: So the court struggles mightily with people that come to court saying, "Well, we can't decide, so you, judge, please decide." I don't know a lot of lawyers who think that court resolutions are the best things for their clients.

Stirling: Right.

Christine: No.

Angela: And I certainly don't. You know, sometimes you have no choice. You can't mediate something. Normally it's because there are children involved, and you have to ask the court.

Christine: And the other issue is, is the courts are pretty backed up currently.

Stirling: Exactly. There's a sort of chronic shortage of judges and the whole bit, okay.

Christine: Mm-hmm. So if you can resolve it outside of court with a mediator or an arbitrator or a collaborative lawyer, what have you, in a set period of time, and you

might be paying a bit of money to do that but at least you're not sitting around waiting for a judge that may never come, at least on that day.

Stirling: So the idea, though, whether it's collaborative law or an arbitration or a mediation process, A., it'll likely cost you less because there's no actual court costs involved, and B., it should expedite some kind of resolution. It's the--you should resolve your differences faster than waiting for a court date, correct?

Angela: Well, we don't really have court costs, in the sense it costs us very little to use a courtroom. But the idea of, if we go into court on a particular day and it's overbooked--

Stirling: Right.

Angela: We can actually, as a lawyer, sit there all day and say to the client, "I'm sorry, we didn't get a judge, and unfortunately, you have to pay me for that day I just sat there."

Stirling: Yep.

Angela: Now what you try to do is use that time effectively and hope you can resolve it while you're waiting for a judge.

Stirling: Mm-hmm.

Angela: And the other thing is that the average judge is really, really good. But they don't have--most of them have a family law specialty. And one of the judges once said to me, "Well, would you ask a stranger what to do with your kids? Well, I'm just a stranger at the corner of Howe and Smythe. Why do you want to ask me how to raise your kids?"

Stirling: Right.

Angela: So let's try to make the decisions ourselves with the aide of some qualified professionals.

Stirling: But you know, this whole category of law is really under the umbrella of emotion, isn't it, because whether we're talking about the net results of a relationship in terms of accumulated wealth, children, property, all of those other things, and possibly some acrimonious feelings, especially with the children involved, or the emotion at the front end of any relationship; the oohs and ahhs of being in love. So all of the issues involved in family law, I would think--maybe I'm being over-simplistic here, but they are a result of a surplus of emotion. Now am I being a little too analytical here, Angela?

Angela: No, not at all, and one of the most difficult things to be in terms of trying to be an ethical lawyer is having to repeat over and over again, "I know you're angry, I know you're hurt, I know you're upset."

Stirling: Sure.

Angela: "But here's what is going to happen when we go to court, and I don't want to take your money to have a judge tell you what I've just told you." So the hardest part of this in my view is ethics. And sometimes a client comes to you and wants to hear a certain thing, wants to hear you're going to punish her husband's infidelity.

Stirling: Right, yep, yep.

Angela: And the court will give her more because of that. And I have lost clients because I don't tell them what they want to hear, I tell them what they need to hear.

Stirling: Right, right. So if an angry spouse comes to you and there's infidelity allegations flying all over the place, and there's a need for revenge. There's a real visceral anger involved. Well, the court isn't going to provide--even with the most expensive lawyer in town, Angela, the court isn't going to punish somebody for malfeasance, cheating, or whatever. They're going to deal with it in a legal fashion. And that's all that's going to come out of it, isn't it?

Angela: That's correct. And people sometimes want to get on the stand and tell their story--

Stirling: Oh, yeah!

Angela: And, you know, I see a lot of cases where often it's self reps, because the lawyers have said, you know, you don't want to pay me if all you want to go do is beat up on your husband verbally in court.

Stirling: Just read that anger into the record.

Angela: Exactly.

Stirling: Right.

Angela: Exactly.

Stirling: Okay. But what's that famous Mark Twain line about he who represents himself has a fool for a client? I mean, I tend to buy into that. I would be terrified to represent myself in court. No matter what a lawyer might charge, I would feel so alien, so out of my element. No matter how angry and self-righteous I felt, I would just--I think I would be my own worst enemy in that environment.

Angela: You generally are. But the people that want to do it want to do it because sometimes they can't afford a lawyer.

Christine: Of course.

Stirling: Okay.

Angela: But there are those people who are sort of professional litigant-types, and we'll say, "Well, I can get back on my spouse by continuing to take them to court for frivolous matters," and they either have to hire a lawyer themselves or they have to figure out how to do it themselves as well.

Stirling: Yeah, Christine, you have some training in collaborative law. So how do you take a person, an emotionally charged person who's just spitting mad and wants some revenge--how do you take that person and convince him or her that while I understand how you feel--

Christine: Exactly.

Stirling: You're not going to get the satisfaction you're after regardless of how much money you spend. So how do you convince that angry, bitter person to take a collaborative, or mediation approach? Talk them down, as it were, off that really emotional anger high.

Christine: Mm-hmm, well, that's exactly what you're trying to do, for the most part. And I think the biggest thing is gaining the trust of your client. And showing them that you understand why they're emotional. And of course, all of our clients are coming from that perspective, for the most part.

Stirling: Absolutely, sure.

Christine: But really, that's not going to help them in the long run. And there's certain things that are just going to happen whether they like it or not, unfortunately. And it's about dealing with it in the best possible way, and providing the healthiest outcome for their children, if they have children, and even for themselves, and their financial well-being, and their, you know, whether they care about the relationship with their ex or not. But just for all their relationships and their well-being in general.

Stirling: I imagine the persuasive process, though, to both of you, must be tough when some of the--and you even talked about in your own personal circumstances, the acrimony is palpable. It's scary how angry people get at each other. And so to try and talk them down from that, that really high-strung--I mean, I don't imagine it happens in 15 minutes or less. It probably takes a few sessions, right?

Christine: Sometimes. Yeah, people often get it pretty quickly when you tell them, you know, this is the way it's going to be one way or another, and the realities of the situation. People do often understand it fairly quickly, I think.

Angela: And sometimes you have to say, "Well, you know, I know this was really terrible, but you have two beautiful children and you have a home, you have assets, and we really don't want you to deplete those assets arguing about how unhappy you are."

Stirling: Right, right.

Angela: And sometimes you say, "Well, you know, yeah, he was a real jerk. But my other client here, this is what happened to her."

Stirling: Right.

Angela: And what's interesting sometimes is that sometimes the clients who have had the most difficult personal circumstances rise above them. And other clients, it's just a matter of coping. And if people have kids, you really do focus on, "This is the man you chose you to have children with, this is the woman you chose to have children with, you're going to remain connected to them. You want to make it ugly now, it's going to be ugly for 10 years." You know, I always tell the story about, do you want to be sitting at your child's wedding and not being able to talk to the father or mother of your child, because there's still so much ugliness.

Stirling: Yes.

Angela: And you have to think long-term.

Stirling: Mm-hmm, interesting. Sorry, Christine, we need to take a break, but finish it off here.

Christine: I was just going to say, the other thing is when you mention the potential costs of a long trial, people change their tune pretty quickly.

Stirling: Yeah, well, when you hit 'em in the bank account, you at least have their undivided attention, right? This is "The Law Show" here on AM 650. It's family law show day, and boy, we're just getting started here. We're going to talk about marriage agreements. What?! Marriage agreements with our guests Angela Thiele and Christine Eilers from Lindsay Kenney LLP when we return here on AM 650.

Announcer: This is "The Law Show". There's more of the show still ahead on AM 650.

## **PART TWO**

Announcer: Now back to the show. This is "The Law Show", with Stirling Faux, on AM 650.

Stirling: Welcome back to the program. On this episode of "The Law Show", we're talking family law. And we're delighted to have a couple of people from Lindsay Kenney LLP in Vancouver with us in studio. Angela Thiele and Christine Eilers are lawyers with Lindsay Kenney LLP. By the way, online you can find a lot more about the firm at [lklaw.ca](http://lklaw.ca). And there's lots of information about our two guests and all they do. I wanted to talk about marriage agreements. Is this part of the new Family Law Act of 2013, this whole marriage agreement thing, Angela?

Angela: No, marriage agreements—pre-nups, commonly called pre-nups, have always been there in the statute, they've always been recognized in the statute. The big

difference in the new act is A., judges have less authority to overturn a marriage agreement.

Stirling: Wow!

Angela: And B., because of this change saying what you have when you go in is yours, you really need that marriage agreement to document what you have. Or if you're expecting an inheritance, a personal injury settlement, you need an agreement to document those things. 'Cause all of those things are now outside division if you document them properly.

Stirling: Okay, now here comes my dumb guy question, all right? Now if I'm Brad Pitt and Angelina Jolie, I know about pre-nups, and I've got a platoon of lawyers on both sides are going to hammer out some kind of deal, 'cause there's billions of dollars at stake, potentially, and there's certainly a lot of assets and property and so on. So I get why super successful, super rich, high profile people need marriage agreements, or pre-nups, as they're more commonly known. But why should a person who's like a regular person, doesn't have a lot of money or much claim to fame, why would a regular person need a marriage agreement in 2013?

Angela: Well, it depends on what you call a regular person these days. I mean, people in Vancouver have a lot of equity in their homes, and it's worth a lot. So if you bought a condo five years ago and it's now got \$100,000 worth of equity, are you going to want to share what you've already built up? If you have a private pension plan, you know, are you going to say, well, gee, that's my security. And the act says I would have to share what I put in from now on. Maybe I can get an agreement saying that's going to be mine, because meanwhile my husband to be is going to build an RSP. So in terms of documenting things, the Baby Boomer generation, there's an awful lot of parents coming into us saying, "Would you do an agreement for my kid, because although they don't know it, they're going to get a million dollar inheritance."

Stirling: Okay, stop it right there. And you both know this, because I just told you this during the break. Christine, my daughter got engaged last weekend. And she's just thrilled. She's just cross-eyed crazy thrilled. And she's in her early thirties. The young man involved is a year or so older. A nice guy. And so she's got a nice job and a career, not a lot of assets, neither does he. There's not a lot of property involved. And yet, you both kind of would think that she should have some kind of marriage agreement. So I'm the dad, and there are a lot of Boomer dads listening to this right now. So when our son or daughter says, "Hey, I'm getting married, come on over and meet my sweetie." Okay, we're going to have that conversation, I'm supposed to take my daughter aside in the next weeks or months ahead and go, "You know, you really should consider a marriage agreement." And she's going to look me straight in the eye, Christine, she's going to say, "Dad, how incredibly unromantic of you!" And I'm supposed to get past that and go, "Okay, fine, I get that, I'm truly being unromantic. But you really need to consider a marriage agreement." Christine, why?

Christine: Well, I mean, it's not necessarily the case that everybody needs a marriage agreement. If two people are going into a relationship and neither of them have very much debt and neither of them have much in the way of assets, then the provisions of the Family Law Act are probably going to work for them down the road. However, that requires you to really know about your partner's assets and debts. Under the new act, debts are also divisible. And so if your daughter's fiancé has, you know, \$100,000 in law school debt, for example, you would want to make sure that that is not divisible at the end of the day. And under the new act, it wouldn't be, but you just want to make sure that it's properly documented. Credit card debt is probably even worse, just because you can continue to increase it over the course of the relationship.

Angela: And how do you prove what was there when the relationship started in terms of debt?

Stirling: Sure, if you don't have it documented. But you would agree with me, at least, Angela, that her--and she would, I know it, she'd look me straight in the eye and go, "Dad! How unbelievably unromantic, what are you thinking?! Why, I just got engaged!" Flash flash with the sparkly ring and all that ooh la la stuff. And, you know, god bless her, she's a wonderful person. And truly in love and unbelievably happy. But then there's a lot of emotion going on here. And as we've already identified in this conversation, a lot of the problems dealing with family law come from a surplus of emotion.

Angela: Well, and the thing is, you don't have to necessarily have it going into the relationship. But let's say in a year or two, the kids come to you or your wife and say, "Mom and Dad, could we have 50,000 for a down payment?"

Stirling: Gulp.

Angela: And you say, well, you know, the back of your mind is going to go, well, you know, I don't mind giving it to my daughter, but I'd really like to make sure if something happens to the two of them, she gets it back.

Stirling: Right.

Angela: So people can sign marriage agreements into--as a relationship moves along, as things change. So you get an inheritance, and you say to your spouse, well, you know what, I'd just as soon like to keep my inheritance for the kids. I've got an inheritance from my family. If anything happens, I want to make sure that goes to my kids. You probably want to put it in writing. And we understand from the statistics that millions of dollars are going to be flowing from inheritances from the Baby Boomers down to their kids in the next few years.

Stirling: Untold millions of dollars, absolutely.

Angela: So it's certainly something that the parents, you know, I have two kids and I can tell you that if I was handing over a down payment, I'd want to be sure that they had a marriage agreement.

Stirling: Well, you know, and it's this whole emotional quotient in family law. Because if two 30-year-olds were going to start a business enterprise together, they would put all of the cards on the table. Each would know what each other was going to contribute to the enterprise, and there would be a contract, it would be spelled out, lawyers would approve it, everything would be ratified by both parties, and we're off to the races. Now, this is just a business enterprise that may or may not make a buck. And we're talking instead about, oh, I don't know, a lifetime partnership that somehow or another is dealt with on an emotional level that almost frowns on those sorts of details that we would do nothing without in a business arrangement, Angela. That's a strange dichotomy, isn't it?

Angela: Well, people are more awkward talking about money than sex. So if you and your fiancé are forthright and disclose things to one another about what you like in bed, why wouldn't you disclose things about how you handle money? And they may not get into actually writing an agreement, because we may say to them, you don't need it. But we have a questionnaire we give to people saying, fill this out and tell us what you have and what you want to protect. So even if they took that question--you know, phoned us up or took off our website the questionnaire and did it and sort of sat down with one another and said, "Oh, I didn't know you still owed that student loan."

Stirling: Ah. So is this on the website right now, this questionnaire that people--can they go to [lklaw.ca](http://lklaw.ca) and pull it up and have a look at the kinds of criteria that you lawyers would look at in terms of parameters within which to draft a marriage agreement?

Christine: I don't think so.

Angela: Well, I've prepared it, I'm not sure I put it on the website. So I send it to all my clients, and we do have certain things on the website. We have a [divorce questionnaire](#) that people can pull off and it gives us all the information we need if they need a divorce.

*(Note: [Cohabitation Questionnaire](#) can now be found on the website. Further family law information and links can be found on the [Family and Matrimonial Law & Litigation](#) page.)*

Stirling: Okay.

Angela: But the cohabitation marriage agreement questionnaire is something that I've recently developed, and I suppose there's no reason not to put it on the website.

Stirling: Well, I hope you do. And if not, I would direct people to [lklaw.ca](http://lklaw.ca) anyway and hit the "contact us" button and find Angela or Christine's phone number to follow up on this. Again, especially, not only if you're, like my daughter, a young person madly, crazily in love and going to get married some time next year. But if you're a parent watching all this go down with a little bit of concern. We're always concerned about our

children's well-being. And you don't want to be accused of meddling or being unromantic or any of that stuff. But still, parents have a role to play in all of this. So even if the young lovebirds don't want to entertain this notion right now, at least moms and dads should know about it, don't you think, Angela?

Angela: Well, I certainly think that a mom or dad who's being asked to contribute to a down payment--

Stirling: Or even the wedding itself can cost a few bucks.

Angela: Exactly.

Stirling: I'm struggling with that one myself these days.

Christine: Or if, I mean, a parent as part of their estate planning, has put their daughter or son as a beneficiary of a trust, for example.

Stirling: Yes.

Christine: Then their interest in the trust, well, that would be an excluded asset. Any increase in value would be a family asset, unless you have an agreement to make sure that it's not. So it's a bit complicated how that works. But you would definitely want to document that to make sure--

Stirling: It seems to be, because--and I'm taking the devil's advocate position here only because I know my daughter is going to be so on my case when she listens to this show, "How could you, Dad?!" But it seems to be almost a road map for failure, in the sense that, well, we've got this agreement now. So if everything blows up in our faces, then, well, we can just walk away. It's all in black and white, and shake hands and have a nice day and Bob's your uncle. It doesn't cater to the emotional romanticism of it all, does it?

Angela: Well, you can look at it two ways--one is, it's not romantic to do it, but it's really not romantic to think about what might happen if your marriage breaks down and you don't have one. So if you're practical and pragmatic and you look at it as, you know, this is just part of the things we talk about when we're getting married. I think I told you before the break that I got married to a guy and didn't know that he didn't want children. And fortunately, I married somebody else who did and have two children.

Stirling: Right, right.

Angela: But I still can't believe, 30 years later, that I married someone without having that really important discussion.

Stirling: And you didn't. And yet, some of your siblings and even your mom had a conversation with that fellow, and they knew that he didn't want children. And you, the spouse, hadn't a clue. Isn't it funny what emotion does, how it clouds our judgment, how so many of us are in love with being in love because of the euphoric quotient that it

delivers to your life. There's nothing quite like floating a few feet above the ground on Cloud Nine. But eventually it does go away. And I hate to be the bearer of bad tidings for my daughter, but eventually life returns to some kind of normal. And I guess what I'm asking about with this whole business of the marriage act, how many people do you think listening to us right now are even aware of the fact that there is a marriage agreement possible for any two people in British Columbia at any time?

Angela: I'd be surprised if it was more than 25 percent.

Stirling: I am, too. I would be, too. I just don't think it's something many of us know about. And it's been on the books for a while, hasn't it?

Angela: Yeah, and one of the reasons why it's just particularly necessary with this new statute is it's hand in hand with what you have now, you better protect as you're going into a relationship.

Stirling: Right, because the act has changed. The ground rules have changed here.

Christine: That's right.

Stirling: So in order to recognize that as a person getting into some kind of relationship, it's important to know the rules. And how you can play safely by the rules.

Angela: And then the last thing is, you know, people cohabit in a fairly casual fashion. What is cohabitation? You know, am I sleeping over five nights out of seven? When did that start? So if you have to look back at when did you start cohabiting, there are a lot of arguments about when did that occur. And people's, for example, pensions. You know, these defined benefit pensions is fairly valuable.

Stirling: Yes.

Angela: You know, another year's worth of pension entitlement, it means money to people.

Stirling: Absolutely.

Angela: So they argue about, when did we start living together?

Stirling: Hmm. So again, if you write it all down up front, it doesn't have to take the romance out of it all, but there's a practical side to all of this, too. That a lot of us are reluctant to go there 'cause it's awfully fun being in love. Our topic on this edition of "The Law Show" here on AM 650 is family law, with the incredibly capable assistance of Angela Thiele and Christine Eilers from Lindsay Kenney LLP in Vancouver. And we're back with lots more right after this.

Announcer: There's more of the show still ahead. This is "The Law Show", on AM 650.

## PART THREE

Announcer: Now back to the show. This is "The Law Show" with Stirling Faux, on 650.

Stirling: Welcome back to the program. Angela Thiele and Christine Eilers are with us, attorneys from Lindsay Kenney LLP. We're talking family law on this episode of "The Law Show". And we wanted to get into, in this portion of the program, the whole matter of children's issues. You both, Christine and Angela, alluded to disputes and how the best interest of the children is a consideration at all times, and how children, in any kind of a break-up of a relationship are, well, they're collateral damage, to use a really awful term. And Christine, you've been there personally. So what do we mean when we're talking about children's issues as it pertains to family law? What are children's issues?

Christine: Well, there's a whole bunch that are dealt with under the new act. Guardianship is sort of the main concept, which is really responsibility for the children.

Stirling: Okay.

Christine: And so, parents who live together at the time the children are born are going to be presumed to be guardians, which means that they have all the responsibilities and rights that come with raising a child, or that particular child. A parent who doesn't live with the child at the time that the child is born will not be presumed to be a guardian under the new law. Which basically means that if mom has child and the dad's not living there at the time, and then the mom will be presumed to be a guardian, but the dad won't be under the new law.

Stirling: Interesting. Now, would that then preclude the dad from being even identified on the child's birth certificate?

Christine: The father would still be the father on the birth certificate. So it's not parentage that that's dealing with, but it's rather guardianship. So it's responsibility for the child.

Stirling: So what if, now Dad, he's split. He's no fun and he's no help. And so he experiences some remorse and comes back to the relationship after baby has arrived. And poor Mom's struggling, and so Dad recognizes, okay, I got to get back into this. So can he just sort of walk back in and, "I'm the dad now!" Or, according to this new law, are there some hoops he has to go through?

Christine: Absolutely. Unless there's an agreement, that father would have to apply to court and complete an affidavit, attaching criminal records checks, administrative children and families record checks, and documenting incidents of family violence. It's quite a comprehensive affidavit. And basically--

Stirling: So he can't just walk in and be a dad, he actually has to prove that he's fit to be a dad.

Christine: Well, he could still potentially have what's called contact under the new law. It's replaced the term "access" with the child. So that's basically visitation with the child. But he has no real rights and responsibilities in terms of, for instance, if the mother wanted to move out of the jurisdiction with the child, she wanted to move anywhere, a parent who doesn't have guardianship has no right to object to that move.

Stirling: Ahh.

Christine: So it's got some really serious implications, not being a guardian.

Stirling: Okay. So in addition to guardianship issues that Christine has identified, Angela, what else--what other items are there under the general heading, Children's Issues.

Angela: Well, one of the things in the new act is a codification of the case law on mobility--when you can move, what factors should the courts look at. Mobility disputes are the most heart-wrenching. I've done a few of them, they're not fun. The parents, there's no--no one's going to win. The parent that is required to stay here when they want to go get a new job in Toronto isn't going to be happy. The parent who sees their child going across the country, and sometimes across the world--

Stirling: Mm-hmm. Well, we're a very international city, and a very multicultural province. And it wouldn't be a shock at all for someone to relocate to Taiwan or Singapore or Africa, for crying out loud.

Angela: Well, the famous case in the Supreme Court of Canada, a parent wanted to go to Australia. So the Supreme Court of Canada said, "Well, here's the factors you have to look at." Our provincial statute has said, let's try to put some of these factors in a list for the judges so it makes it a little easier for them to consider which factors should be the most important." That's a change in our law, and I think it's a good change to provide a list. Unfortunately, it's probably not going to stop those disputes showing up in court.

Stirling: Right. I've got to ask you about something, and this perhaps I'm showing my lack of connection to 2013 law. For example, the fact that this new family act in British Columbia has been proclaimed within the last few months; I'm afraid I didn't know that until about an hour and a half ago. So--and I don't think I'm too out of whack with the rest of people living in BC. So help me out with this one. Angela, why don't you take this one on. I have a sense, a perception, probably erroneous, but I have a perception nonetheless, that when it comes to finding in a legal case involving a dispute over child custody or guardianship or whatever, the courts have typically and traditionally found in favor of the mother. The natural, nurturing parent. And have given shorter shrift to the father. There seems to have been a sort of bias in the courts towards the mother. Over time, has that changed, is that still the same, or was there bias there in the first place?

Angela: Well, I've been practicing about 30 years, and I think the difference is the family relationships were perhaps a little different 30 years ago. Women could afford to stay home and raise their family. And so courts would tend to say, "Well, if you chose the

mother to be the primary care giver, then after separation, that should probably continue." So probably the first 10 or 15 years of my practice, you were still getting dads having every second weekend and a Wednesday night visit.

Stirling: Sure.

Angela: That started to shift basically because society started to shift. You needed two parents working; children were often in childcare, parents were doing, both taking parenting roles. And the court sort of recognized, as did society, that when a marriage breaks down, there's no reason to favor one parent over the other just because they happened to give birth to a child. It's really difficult. I've got kids, I will say to a parent who says--a mother who usually says, "But I'm the mom." And I'll say, "Yeah, that's right. But when you chose to have children with this man, you gave him equal rights to you. And if you can't tell me that he's a bad dad, other than the, you know maybe he forgot my daughter's birthday was on the seventh rather than the ninth."

Stirling: Right, right.

Angela: But it's a difficult emotional response for a mom to be told, well, no, likely if you're both capable and your jobs allow it, you both will have the children half-time. You know, week on, week off, younger children, sort of two days, two days, and then every second weekend. You know, I think having dads stay in the picture is better for kids. All the statistics tell you that parents that managed to parent together after separation amicably, the children are better off.

Stirling: Absolutely, yeah.

Angela: So one of the things they say is that divorce doesn't harm children, but acrimony harms children.

Stirling: Right.

Angela: So I think the judges, the divorce act says maximum contact for both parents as practicable. The new act says, just look at the best interests of the children. And the best interest of the children is to have two involved parents.

Stirling: Well it's interesting, you know, Christine, because Angela's talking about her 30 years as a practicing attorney, and the changes in society that have occurred in that time. You're fresh out of law school, relatively speaking, and now your caseload could very easily involve subjects that, when Angela was in your position, didn't exist.

Christine: Absolutely.

Stirling: Like same sex couples as parents, surrogate parents. There's an actor in California who this week was a sperm donor and now wants paternal privileges and recognition and status. I mean, all of this stuff, 20, 30 years ago, it was fantasy. It was

the stuff of Hollywood movies. It's real life in 2013. Does the new act cover some of these relatively fresh topics?

Christine: It really does, quite extensively, actually. It talks about parentage for any assisted reproduction-type scenario. And really clarifies the law around who are actually going to be the parents of that child, when there's a donor or when there's a surrogate. And parents can still make agreements and sort of contract out of what the law says is going to be the default position. But there's a lot of clarification in there, and really, sort of anticipating that technology might change or that science might change, and there may be other things that come up in the future as well.

Stirling: Right. And this is all the more reason, friends, as you listen to this program today, and we've still got another segment to come. But, you know, with the changing social realities in which we all live, clearly the law, and they're doing a pretty good job in BC at least of catching up in most areas with the new act of 2013, but there are all the more reason to need or to recognize the value of a lawyer in situations along the way, which can be whether it's something as simple as a marriage agreement before everything begins. All of these steps can be taken really do end up allowing people to advance, I think, a little more easily. And if you need to find out more about some of the services that our guests and their colleagues at Lindsay Kenney LLP offer, please go to their website. We're going to take a break right now and give you a couple minutes to blast over to the computer and check out [lklaw.ca](http://lklaw.ca). And we'll catch you on the other side after this.

Announcer: This is "The Law Show." There's more of the show still ahead on AM 650.

#### PART FOUR

Announcer: This is "The Law Show" on AM 650. Now back to the show.

Stirling: Good to have you with us on this episode of "The Law Show". Christine Eilers and Angela Thiele with Lindsay Kenney LLP in Vancouver, our guests. We're talking family law on this program. And I wanted to return to a subject that we've touched on a few times through the conversation so far. And that's this whole matter of cohabitation. Living together, living in sin, as it used to be known back in the sixties. And people still do. A lot of people forego the formalities of marriage and have long, successful relationships. Are the rules--oh, first of all, we talked about the new act and how it recognizes cohabitation. What's the timeline? How long do you have to live with someone before the law recognizes you as being cohabitants, and therefore equal to equal distribution of assets under the law?

Angela: Two years.

Stirling: Two years. Okay, so what about a situation in which you co-habit with a person who has children from a previous relationship? How does that alter the landscape, if at all?

Angela: Well, you take on an obligation, a financial obligation, for that child after one year--

Stirling: Oh.

Angela: Of, in essence, directly or indirectly supporting that child. So if you prima facie as a step-parent--

Stirling: Right.

Angela: And the natural father, who's really supposed to pay for those kids, he makes 20,000 and you make a hundred, well, you've just taken on the child support difference if the marriage breaks down, between 20 and 100,000.

Stirling: So the law is, even though they're not prepared to recognize our relationship as being a cohabitation situation until after two years, where children are involved, the law makes an exception because of the children, I'm assuming, Christine. That's why the exception, to make sure those kids are looked after.

Christine: Yeah, I would say that that's the reason for it.

Angela: And I forgot, of course, that cohabitation doesn't have to be two years if you've had a child together.

Christine: For the purposes of spousal support.

Stirling: Ah, oh, okay. So if you're just living together, no children, two years after that beginning, the law recognizes it as a formal legal relationship. But if there are children produced in less than two years, than the recognition is advanced to the birth of the child.

Angela: For certain purposes.

Stirling: Okay.

Angela: So for certain legal issues, if you have a child in that first two years, you will be recognized and be given certain rights that you didn't otherwise have before.

Stirling: Right. What about children's rights? I mean, Shakespeare wrote about bastard children, and we always--society over millennia has seen fit to look down its collective nose at children who are "illegitimate." That's a very antiquated concept in 2013. Is it the same in law? Has the law gotten way past of all those crazy old slogan and notions?

Angela: The law got past that in 1984 or so with the Charter of Rights and Freedom, so yeah, you're very antiquated.

Stirling: Well, you know, again, so are a lot of people in British Columbia who doesn't spend a lot of time around law books or lawyers. We don't know these things. So, you know, I don't know, I thought it was a fair question to ask. I mean, I know it's old school. And some of the language was bizarre. But, I mean, there's still a societal attitude out there that's still troubling. Not as widespread as once, but in certain cultures particularly, it's still quite prevalent.

Angela: And certainly when I started practicing law, you were having people come in--it used to be that if you had an illegitimate child, you could agree to pay very little in child support, and those agreements were binding.

Stirling: Yes.

Angela: And so the parents, you know, when the Act--the law changed in '84, I was a young lawyer, I had a number of parents coming into me saying, "I got this agreement because some social worker back when I was a teenager said, 'Well, he's going to pay you \$5,000, and that's all the child support you're ever going to get.' Are these enforceable now that we've got this new Charter and Rights and Freedoms, and I happen to know the father of my child now makes \$100,000 a year?"

Stirling: Right.

Angela: So that's why I know so well when it changed, because I was involved in some of those cases in the early days.

Stirling: I wanted to ask you, this is kind of off track, but it's still under the general heading of family law. And we mentioned this, Christine, earlier a few moments ago, given the relative freshness that you bring to the firm just out of school and such, and some of the cases that you're dealing with were unheard of even ten years ago. Now we all know about same sex couples and marriage, in certain jurisdictions. So clearly, the downside of that is going to be same sex couples divorcing. Have you experienced, either of you in your practice, experienced this yet?

Angela: Well, in fact, after we leave here, I'm going to go swear an affidavit for a same sex wife who is claiming a divorce, and then you have same sex couples with children--

Stirling: Exactly, yes.

Angela: Those cases have been around for a few years, because it's this question of, well, I happened to give birth to the child as one part of the same sex couple, but we were no different than husband and wife.

Stirling: Right. Does the law see it that way, too?

Angela: Generally it does, yes.

Stirling: Okay.

Angela: You have the same rights as the sort of supportive parent as the parent who gave birth to the child.

Christine: And that's been codified under the new law.

Stirling: Okay, right.

Angela: But we've actually had cases where two gay couples, I think it went, two gay couples, the one woman gave birth to a child for the male half of the same sex--a male same sex couple, and then they were supposed to provide sperm so they could have one. And they were sort of raising this child as a foursome. And the courts had to consider that. I think that was in Alberta.

Stirling: Oh, boy. That would be a tough one to unravel. What about grandparents? Only a couple minutes left here, but I wanted to make sure that grandparents, under the new law, it's only a couple months old, are there any improvements for grandparents who will become alienated through break-ups of relationships? They're still the grandparents to these gorgeous little children, and all they want to do is to see them, and to have access to them and hug them, and sometimes there's, oh, just World War III breaking out, and the grandparents are the first casualties of the whole thing. Has the law at all accommodated grandparents in any greater way, with the new act?

Angela: The new act language is virtually the same. I mean, if your child, you know, the father is getting access to the children, you're supposed to exercise your rights to see the kids during dad's time. Where grandparents have always had a right and been fairly successful in the court is if the parent, their son or daughter perhaps has a drug addiction or some reason why they can't see the child. Grandparents have always been pretty successful in going in and saying, "Well, we want to keep the family ties. And we recognize you don't want this child in the custody or in the parenting time with this addicted--"

Stirling: Irresponsible individual, sure.

Angela: But there's nothing irresponsible about us. We love the children; we'd like to have some time.

Stirling: And they're our grandchild.

Angela: And their grandchild, exactly.

Stirling: Right, okay, so there are accommodations that can be made.

Angela: And the court's being relatively, I think, has been quite welcoming to a grandparent who says, "Look, everybody wants to be here to love this child. Why wouldn't you give me time so that we can prove that our side of the family still loves you, even if dad has got some problems."

Stirling: Always nice to end the program on a positive note. And that was a nice one to do. Well done. Angela Thiele and Christine Eilers from Lindsay Kenney LLP, thank you both for coming, and just a fantastic conversation. Let's do this again. We'll see you next time on "The Law Show".