

Blurred Lines: If your Relationship is Confused, The Law Will be Too

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There are many reasons why separated partners choose to continue living together, share finances, or commit to shared aspects of life beyond a romantic relationship. In some cases, the end date to your relationship will change the way property is divided.

Recent High Court decision, *Cooper v Smithie*, highlights the importance of understanding when the law will consider your de facto relationship has ended, or what steps you should take to confirm that the relationship is at an end.

Ms Smithie bought a property early in their relationship. They lived in a rental property together for a short time before separating. When they rekindled the relationship, a few years later, they moved into her property. This became the

“family home.” At one stage, Ms Smithie went to a women’s refuge following an act of family violence at the hands of Mr Cooper. When she returned, they moved into separate rooms but continued living in the same house to care for their children despite the lack of “love, companionship, loyalty, emotional support, and other such intangibles.” He later moved out.

She says that the relationship ended in March 2018 when she went to women’s refuge. The Family Court agreed with her, focusing on the violence as the end point of the relationship. He was awarded 15% of the house under extraordinary circumstances making equal sharing injustice, namely financial independence, lack of contributions to the family home and lack of emotional commitment to the relationship.

He says that the relationship continued until June 2022, a few months before he moved out of the family home in November. The High Court agreed with him, and split the property equally, following the “presumption of equal sharing.” Judge Johnstone explained that “while the loving and affectionate aspects of their commitment to each other dissolved, there remained a degree of mutual commitment to a shared life, involving care and support of children, which in my view are more distinctive features of situations in which people are properly seen to be “living together as a couple.””

This case highlights how the division of property can be very different depending on the start and end dates of your property. It amplifies the importance of clearly communicating with your ex-partner and understanding what the Courts may consider in deciding when a de facto relationship has ended.

If your relationship is in a grey area, contact a lawyer on our Family Team who can advise you on the legal status of your relationship, and how a court may respond to help protect you from ‘he said, she said’.

Written with the assistance of Esme Thomas, Law Clerk , summer 2025/2026