Table of Contents

PART I. FAMILY LAW ACT, R.S.O. 1990, C. F.3

CHAPTER 1-FLA. PRELIMINARY MATERIALS

I. HISTORY

§ 1-FLA:1 Amendments

II. INTRODUCTION

- § 1-FLA:2 [Preamble]
- § 1-FLA:3 General
- § 1-FLA:4 The Orderly and Equitable Settlement of the Affairs of the Spouses

III. SECTION 1 DEFINITIONS

A. LEGISLATION AND HISTORY

§ 1-FLA:5 [Section 1 Definitions]

B. GENERAL

- § 1-FLA:7 Section 1 General
- § 1-FLA:8 Child—General

C. CHILD—DEMONSTRATED A SETTLED INTENTION TO TREAT AS A CHILD

- § 1-FLA:9 Generally
- § 1-FLA:10 Timing of Settled Intention
- § 1-FLA:11 Unilateral Withdrawal from Parent/Child Relationship— Withdrawal by Parent
- § 1-FLA:12 —Withdrawal by Child
- § 1-FLA:13 Settled Intention—Interim Motions
- § 1-FLA:14 Cases Where Settled Intention Found
- § 1-FLA:15 No Settled Intention

D. CHILD SUPPORT GUIDELINES

§ 1-FLA:16 Definition

E. COHABIT

- § 1-FLA:17 Definition
- § 1-FLA:18 General
- § 1-FLA:19 Cohabitation or Conjugality Defined, Factors, Tests
- § 1-FLA:20 Parties Having Separate Residences
- § 1-FLA:21 Sexual Relationship
- § 1-FLA:22 Start of Cohabitation
- § 1-FLA:23 End of Cohabitation
- § 1-FLA:24 Cohabitation Found
- § 1-FLA:25 Cohabitation Not Found

F. PARENT AND SPOUSE

- § 1-FLA:26 Parent—Definition
- § 1-FLA:27 Spouse—Definition—Spouse—General
- § 1-FLA:28 —S. 1(1)(a): Married—Former Spouses
- § 1-FLA:29 —Religious Marriages Without a Civil Component
- § 1-FLA:30 —S. 1(1)(b): Entered into, in Good Faith, Marriage That Is Void or Voidable
- § 1-FLA:31 —S. 1(2): Polygamous Marriages

IV. SECTION 2 PROCEDURAL AND OTHER MISCELLANEOUS MATTERS

- § 1-FLA:32 [Section 2 Procedural and Other Miscellaneous Matters]
- § 1-FLA:34 Section 2 Staying the Application
- § 1-FLA:35 Staying the Application: s. 2(1)
- § 1-FLA:36 All Proceedings in One Court: s. 2(2)
- § 1-FLA:37 Statements Re Removal of Barriers to Remarriage: s. 2(4)
- § 1-FLA:38 Dismissal: s. 2(6)
- § 1-FLA:39 Extension of Time
- § 1-FLA:40 —On Death: s. 2(8)
- § 1-FLA:41 Incorporation of Contract in Order: s. 2(9)
- § 1-FLA:42 Act Subject to Contracts: s. 2(10)
- § 1-FLA:43 —Effect of Property Conveyance Pursuant to Separation Agreements Where the Parties Reconcile
- § 1-FLA:44 —Releases
- § 1-FLA:45 —Child Support
- § 1-FLA:46 —Domestic Contracts Made Outside Ontario
- § 1-FLA:47 —Estates
- § 1-FLA:48 —Miscellaneous

V. SECTION 3 MEDIATION

- § 1-FLA:49 [Section 3 Mediation]
- § 1-FLA:51 Mediation—General

CHAPTER 2-FLA. PART I FAMILY PROPERTY

II. SECTION 4 DEFINITIONS

A. LEGISLATION AND HISTORY

§ 2-FLA:3 [Section 4 Definitions]

B. OVERVIEW OF FAMILY PROPERTY

§ 2-FLA:7 The Family Law Act, 1986

C. DEFINITIONS (S. 4(1))

1. General

- § 2-FLA:8 "Matrimonial Home" § 2-FLA:9 -Property Not a Matrimonial Home-Deduction Allowed § 2-FLA:10 —Property a Matrimonial Home—Deduction Not Allowed "Net Family Property" § 2-FLA:11 § 2-FLA:12 Meaning of "Value" § 2-FLA:13 —Cases Applying Valuation Approaches § 2-FLA:14 Value—Costs of Disposition Including Taxes § 2-FLA:15 —Business or Investment Interests § 2-FLA:16 —Capital Cost Allowance — — Capital Gains—Tax Liability § 2-FLA:17 § 2-FLA:18 —Future Costs of Litigation § 2-FLA:19 -Income Tax § 2-FLA:20 -Matrimonial Home § 2-FLA:21 — — Deduction Allowed — — Deduction Not Allowed § 2-FLA:22 § 2-FLA:23 — — Conditions Applied § 2-FLA:24 -Other Property § 2-FLA:25 -RRSP § 2-FLA:26 —Disposition of Shares § 2-FLA:27 Value—On Death § 2-FLA:28 "All the Property Owned by a Spouse" § 2-FLA:29 Spouse's Debts and Liabilities § 2-FLA:30 —Debts to Close Relatives § 2-FLA:31 —Contingent Liabilities —Debts Incurred Upon Death § 2-FLA:32 § 2-FLA:33 —Inter-Spousal Debts § 2-FLA:34 —Debts That Are Directly Related to the Acquisition or Significant Improvement of a Matrimonial Home § 2-FLA:35 —General "Net Family Property" Clause (b): Property Other than a § 2-FLA:36 Matrimonial Home Owned on Date of Marriage— **Deduction Allowed** § 2-FLA:37 -Deduction Not Allowed
 - 2. "Property"
- § 2-FLA:38 Generally

```
§ 2-FLA:39
             Contingent Interests
§ 2-FLA:40
             Agreements—Non-Competition Agreements
             Agreement of Purchase and Sale
§ 2-FLA:41
§ 2-FLA:42
             Beneficial Interests
§ 2-FLA:43
             Bonuses
§ 2-FLA:44
             Business
             Club Membership
§ 2-FLA:45
§ 2-FLA:46
             Commissions
§ 2-FLA:47
             Compensation for Incarceration
§ 2-FLA:48
             Contingent Interests
§ 2-FLA:49
             Damages for Personal Injury
§ 2-FLA:50
             Degrees
§ 2-FLA:51
             Disability Payments
             Employment Contracts
§ 2-FLA:52
§ 2-FLA:53
             Estates
             Future Interest
§ 2-FLA:54
§ 2-FLA:55
             Growth in Value
§ 2-FLA:56
             Household Contents
§ 2-FLA:57
             Illegally Obtained Assets
§ 2-FLA:58
             Income Tax Refunds
§ 2-FLA:59
             Jewelry
§ 2-FLA:60
             Jointly Owned Property
             Legal Claims
§ 2-FLA:61
§ 2-FLA:62
             Legal Fees
             Life Insurance
§ 2-FLA:63
             Life Interests in Property
§ 2-FLA:64
§ 2-FLA:65
             Loans
§ 2-FLA:66
             Lost Profits
§ 2-FLA:67
             Milk Quotas
§ 2-FLA:68
             Money
§ 2-FLA:69
             Nursing Home Care
§ 2-FLA:70
             Pay Equity Settlement
§ 2-FLA:71
             Pensions
§ 2-FLA:72
             Retirement Plan—Client List/Book of Business
             —Retirement Incentives
§ 2-FLA:73
§ 2-FLA:74
             Pets
§ 2-FLA:75
             Right to Purchase Property
§ 2-FLA:76
             Royalties
             Sequestered Property
§ 2-FLA:77
§ 2-FLA:78
             Severance Payments
§ 2-FLA:79
             —Property or Income—Income
§ 2-FLA:80
             — Property
             —Whether or Not a Severance Is Property of the
§ 2-FLA:81
              Recipient at Time of Separation
§ 2-FLA:82
             —Support Cases
§ 2-FLA:83
             Sick Leave
§ 2-FLA:84
             Stock Options
§ 2-FLA:85
             Tax Instalments
```

Table of Contents

§ 2-FLA:86	Tenancies at Will
§ 2-FLA:87	Termination of Employment Rights
§ 2-FLA:88	Transfer to Third Party
§ 2-FLA:89	Trusts
§ 2-FLA:90	Unjust Enrichment—Awards
§ 2-FLA:91	Workers' Compensation Benefits
3.	"Valuation Date"
§ 2-FLA:92	Generally
4.	Pensions
§ 2-FLA:93	Definitions—Basic Types of Pension Plans—Defined Contribution Pension Plans
§ 2-FLA:94	——Defined Benefit Pension Plans
§ 2-FLA:95	— — Vested and Unvested Pensions
§ 2-FLA:96	Pensions—The New Regime
§ 2-FLA:97	—Overview of New Regime
§ 2-FLA:98	—Transitional Rules
§ 2-FLA:99	—New Provisions—Family Law Act
§ 2-FLA:100	——Pension Benefits Act
§ 2-FLA:101	—Pension Benefits Act and Regulation Amendments— Lump Sum if the Pension Is Not yet in Pay
§ 2-FLA:102	——Division of a Pension if the Pension Is in Pay
§ 2-FLA:103	—Joint and Survivor Pensions
§ 2-FLA:104	—Valuation of Pensions Not Governed by the Pension Benefits Act
§ 2-FLA:105	—Equalization
§ 2-FLA:106	——Exclusion of Canada Pension Plan Benefits
§ 2-FLA:107	—The Impact of Immediate Settlement of the Pension Within the Equalization Payment
5.	Professional Licences and Degrees
§ 2-FLA:108	Whether or Not a Professional Licence Is Property
D. EX	CLUDED PROPERTY (S. 4(2))
§ 2-FLA:109	Introduction
§ 2-FLA:110	Gifts and Inheritances (s. 4(2)1)
§ 2-FLA:111	—Gifts—General
§ 2-FLA:112	—Gifts Made After the Marriage That May Be
0.0 === 1.440	Excluded—Examples
§ 2-FLA:113	 Examples of Transactions That Are Not Gifts and Therefore Not Excluded Property
§ 2-FLA:114	—Inheritances (s. 4(2)1)
§ 2-FLA:115	Income from Gifts or Inheritances (s. 4(2)2)
§ 2-FLA:116	Damages and Other Compensation (s. 4(2)3)
§ 2-FLA:117	Proceeds or a Right to Proceeds of a Policy of Life Insurance, as Defined in the <i>Insurance Act</i> , That Are Payable on the Death of the Life Insured (s. 4(2)4)

§ 2-FLA:118	Property into Which Excluded Property Can Be Traced (s. 4(2)5)
§ 2-FLA:119	—Tracing of Gifted or Inherited Property
§ 2-FLA:120	—Tracing of Damages or a Right to Damages
§ 2-FLA:121	Excluded Property Agreed Upon by Domestic Contract (s. 4(2)6)
§ 2-FLA:122	Unadjusted Pensionable Earnings (s. 4(2)7)
§ 2-FLA:123	Miscellaneous
§ 2-FLA:124	Onus of Proof Re Deductions and Exclusions (s. 4(3))

E. NEGATIVE NET FAMILY PROPERTY AND SPOUSE BANKRUPT

- § 2-FLA:125 Negative Net Family Property (s. 4(5))
- § 2-FLA:126 Spouse Bankrupt

III. SECTION 5 EQUALIZATION OF NET FAMILY PROPERTIES

A. LEGISLATION AND HISTORY

- § 2-FLA:127 [Section 5 Equalization of Net Family Properties]
- § 2-FLA:129 Related Sections

B. ENTITLEMENT TO EQUALIZATION PAYMENT

1. General

- § 2-FLA:130 Overview
- § 2-FLA:131 Cases—General
- § 2-FLA:132 —Limitation Periods
- § 2-FLA:133 —Valuations
- § 2-FLA:134 —Practice and Procedure

2. Meaning of Separation

- § 2-FLA:135 Separation of the Spouses
- § 2-FLA:136 Reasonable Prospect of Reconciliation
- § 2-FLA:137 Valuation Date

3. Calculating the Equalizing Payment

- § 2-FLA:138 Overview
- § 2-FLA:139 Cases

4. Unequal Division

- § 2-FLA:140 Overview
- § 2-FLA:141 Failure to Disclose Premarital Debts/Liabilities: s. 5(6)(a)
- $\$ 2-FLA:142 Debts/Liabilities Incurred Recklessly or in Bad Faith: s. 5(6)(b)
- § 2-FLA:143 —Unequal Division Ordered
- § 2-FLA:144 —Unequal Division Not Ordered

Table of Contents

§ 2-FLA:145	Gifts Made by the Other Spouse: s. 5(6)(c)
§ 2-FLA:146	Depletion of Net Family Property: s. 5(6)(d)
§ 2-FLA:147	—Unequal Division Ordered
§ 2-FLA:148	—Unequal Division Not Ordered
§ 2-FLA:149	Cohabitation Less than Five Years: s. 5(6)(e)
§ 2-FLA:150	—Unequal Division Ordered
§ 2-FLA:151	—Unequal Division Not Ordered
§ 2-FLA:152	Incurring Debts, Liabilities in Order to Support the Family: s. 5(6)(f)
§ 2-FLA:153	—Unequal Division Ordered
§ 2-FLA:154	—Unequal Division Not Ordered
§ 2-FLA:155	A Written Agreement between the Spouses That Is Not a Domestic Contract: s. 5(6)(g)
§ 2-FLA:156	—Unequal Division Ordered
§ 2-FLA:157	—Unequal Division Not Ordered
§ 2-FLA:158	—Other
§ 2-FLA:159	Any Other Circumstance Relating to the Acquisition, Disposition, Preservation, Maintenance or Improvement of Property: s. 5(6)(h)
§ 2-FLA:160	—Unequal Division Ordered
§ 2-FLA:161	—Unequal Division Not Ordered
§ 2-FLA:162	Miscellaneous
5.	Advance on Equalization; Third Party Claims
§ 2-FLA:163	Advance on Equalization
§ 2-FLA:164	Third Party Claims
C. DE	EATH; IMPROVIDENT DEPLETION; BANKRUPTCY
§ 2-FLA:165	Equalizing Net Family Properties on Death: s. 5(2)
§ 2-FLA:166	—Other Cases
§ 2-FLA:167	Improvident Depletion: s. 5(3)
§ 2-FLA:168	Equalization and Bankruptcy
D. PU	JRPOSE; INTEREST; APPEALS
§ 2-FLA:169	Purpose: s. 5(7)
§ 2-FLA:170	
§ 2-FLA:171	—Awarded
§ 2-FLA:172	—Not Awarded
§ 2-FLA:173	Post-Judgment Interest
§ 2-FLA:174	Appeals
	TON 6 ELECTION
§ 2-FLA:175	[Section 6 Election]
§ 2-FLA:176	General
§ 2-FLA:177	Election: Spouse's Will
§ 2-FLA:178	Election—Six-Month Limitation Relating to Elections and Commencing Actions

——Cases § 2-FLA:179 § 2-FLA:180 —Whether the Right to Elect Is Personal § 2-FLA:181 —Making an Election Where There Are Multiple Wills § 2-FLA:182 -Revocation of an Election -Wording of the Election § 2-FLA:183 § 2-FLA:184 —Effect of the Election on Residual Interests § 2-FLA:185 —Additional Rights -Life Insurance, Pensions and Property Obtained by § 2-FLA:186 Right of Survivorship § 2-FLA:187 —Effect of Separation § 2-FLA:188 —Other Issues § 2-FLA:189 Acknowledgement

V. SECTION 7 APPLICATION TO COURT

- § 2-FLA:190 [Section 7 Application to Court]
- § 2-FLA:192 General
- § 2-FLA:193 Applications to Court: s. 7(1)
- § 2-FLA:194 Personal Action; Estates: s. 7(2)
- § 2-FLA:195 Limitation Period: s. 7(3)

VI. SECTION 8 STATEMENT OF PROPERTY

- § 2-FLA:196 [Section 8 Statement of Property]
- § 2-FLA:198 Statement of Property

VII. SECTION 9 POWERS OF COURT

- § 2-FLA:199 [Section 9 Powers of Court]
- § 2-FLA:201 Powers of Court
- § 2-FLA:202 —Related Sections
- § 2-FLA:203 —General
- § 2-FLA:204 Payment of Equalization Entitlement (s. 9(1)(a))
- § 2-FLA:205 Security for Performance of Obligation (s. 9(1)(b))
- § 2-FLA:206 Instalments or Delayed Payment (s. 9(1)(c))
- § 2-FLA:207 —Granted
- § 2-FLA:208 —Not Granted
- $\$ 2-FLA:209 Property—Transferred to or in Trust for or Vested in a Spouse (s. 9(1)(d)(i))
- § 2-FLA:210 Partition or Sale (s. 9(1)(d)(ii))
- § 2-FLA:211 —Additional Cases
- § 2-FLA:212 Interim Disbursements

VIII. SECTION 10 DETERMINATION OF QUESTIONS OF TITLE BETWEEN SPOUSES

A. LEGISLATION AND HISTORY

§ 2-FLA:213 [Section 10 Determination of Questions of Title between Spouses]

B. GENERAL

- § 2-FLA:215 General—Determinations of Questions of Title between Spouses/Former Spouses
- § 2-FLA:216 Who May Apply
- § 2-FLA:217 —Spouse
- § 2-FLA:218 —Former Spouse
- § 2-FLA:219 —Surviving Spouse
- § 2-FLA:220 Relief Is Discretionary
- § 2-FLA:221 "Other than a Question Arising Out of Net Family Properties under Section 5"
- § 2-FLA:222 Timing of the Application—The Defence of Laches
- § 2-FLA:223 Subject Matter of Section 10 Applications

C. TYPES OF ORDERS

- § 2-FLA:224 Declarations
- § 2-FLA:225 Compensation
- § 2-FLA:226 Partition or Sale
- § 2-FLA:227 —Interim Orders
- § 2-FLA:228 Other Orders
- § 2-FLA:229 Applications for Orders under s. 10 Denied

D. VALUATION

§ 2-FLA:230 General

E. RELATIONSHIP BETWEEN SECTIONS 10 AND OTHER SECTIONS OF THE FAMILY LAW ACT

- § 2-FLA:231 Section 10 and Section 11
- § 2-FLA:232 Relationships between Sections 10 and Section 12
- § 2-FLA:233 Relationship between Sections 10 and Section 14

F. UNJUST ENRICHMENT—GENERAL

- § 2-FLA:234 General
- $\$ 2-FLA:235 The Leading Case on Unjust Enrichment—Kerr v. Baranow
- § 2-FLA:236 The Legal Framework for an Unjust Enrichment Claim
- § 2-FLA:237 The Elements of an Unjust Enrichment Claim
- § 2-FLA:238 —(i) Enrichment of or Benefit to the Defendant; and (ii) Corresponding Deprivation to the Plaintiff
- § 2-FLA:239 —(iii) Absence of a Juristic Reason
- § 2-FLA:240 Determining the Appropriate Remedy for an Unjust Enrichment
- § 2-FLA:241 Unjust Enrichment—Other Cases Decided Before Kerr v. Baranow

G. UNJUST ENRICHMENT—MONETARY AWARD— JOINT FAMILY VENTURE

§ 2-FLA:242 Joint Family Venture

	TABLE OF CO.
§ 2-FLA:243	Mutual Effort
§ 2-FLA:244	Economic Integration
§ 2-FLA:245	Actual Intent (Expressed or Inferred)
§ 2-FLA:246	Priority of the Family
§ 2-FLA:247	The Role of Mutual Conferral of Benefits Where There Is a Joint Family Venture
§ 2-FLA:248	Monetary Award Where There Is No Joint Family Venture
§ 2-FLA:249	The Role of Mutual Benefit Conferral Where There Is No Joint Family Venture
§ 2-FLA:250	Miscellaneous
H. CO	ONSTRUCTIVE TRUST—GENERAL
§ 2-FLA:251	General
§ 2-FLA:252	Constructive Trust Defined
§ 2-FLA:253	Constructive Trust—Granted
§ 2-FLA:254	—Not Granted
§ 2-FLA:255	Constructive Trusts—Estates—Married Couples
§ 2-FLA:256	——Constructive Trust Imposed
§ 2-FLA:250 § 2-FLA:257	<u>-</u>
•	——Constructive Trust Not Imposed
§ 2-FLA:258	—Common-Law Couples
§ 2-FLA:259	——Constructive Trust Imposed
§ 2-FLA:260	——Constructive Trust Not Imposed
I. RE	SULTING TRUST
§ 2-FLA:261	General
§ 2-FLA:262	Cases Where Resulting Trust Found
§ 2-FLA:263	Cases Where Resulting Trust Not Found
§ 2-FLA:264	Quantification of the Resulting Trust
IX. SECT	TION 10.1 INTEREST IN A PENSION PLAN
§ 2-FLA:265	[Section 10.1 Interest in a Pension Plan]
§ 2-FLA:266	General
	ON 11 OPERATING BUSINESS OR FARM
§ 2-FLA:267	[Section 11 Operating Business or Farm]
§ 2-FLA:269	General
XI. SECT	TION 12 ORDERS FOR PRESERVATION
§ 2-FLA:270	[Section 12 Orders for Preservation]
§ 2-FLA:272	General
§ 2-FLA:273	—Meaning of Depletion
§ 2-FLA:274	Jurisdiction
§ 2-FLA:275	Orders Granted
§ 2-FLA:276	Orders Refused
-	
9 Z-FLA:211	Miscellaneous

§ 2-FLA:278 Position Where No Preservation Order

XII. SECTION 13 VARIATION AND REALIZATION OF SECURITY

§ 2-FLA:279 [Section 13 Variation and Realization of Security]

XIII. SECTION 13.1 ORDER REGARDING CONDUCT

- § 2-FLA:281 [Section 13.1 Order Regarding Conduct]
- § 2-FLA:282 General

XIV. SECTION 14 PRESUMPTIONS

- § 2-FLA:283 [Section 14 Presumptions]
- § 2-FLA:285 General—Commentary
- § 2-FLA:286 —Cases—General
- $\$ 2-FLA:287 ——Property Held by Spouses in Joint Tenancy: s. 14(a)
- § 2-FLA:288 —Joint Bank Accounts (s. 14(b))
- § 2-FLA:289 Cases Where Resulting Trust Found
- § 2-FLA:290 Cases Where Resulting Trust Not Found
- § 2-FLA:291 Cases Where Resulting Trust Not Applicable

XV. SECTION 15 CONFLICT OF LAWS

- § 2-FLA:292 [Section 15 Conflict of Laws]
- § 2-FLA:294 Where There Is No Marriage Contract
- § 2-FLA:295 Where There Is a Marriage Contract
- § 2-FLA:296 The "Internal Law" of the Place
- § 2-FLA:297 No Distinction between Movables and Immovables
- § 2-FLA:298 "Last Common Habitual Residence"
- § 2-FLA:299 Property Outside Ontario, Parties' Last Common Habitual Residence, Ontario
- § 2-FLA:300 Shares in Property Outside Ontario
- § 2-FLA:301 Foreign Marriage Contracts; Property in Ontario
- § 2-FLA:302 Recognition and Consequence of Valid Foreign Divorce on Claims for Property
- § 2-FLA:303 Practice and Procedure
- § 2-FLA:304 Miscellaneous

XVI. SECTION 16 APPLICATION OF PART

§ 2-FLA:305 [Section 16 Application of Part]

CHAPTER 3-FLA. PART II MATRIMONIAL HOME

I. INTRODUCTION

§ 3-FLA:2 General—Family Law Act—Part II

II. SECTION 17 DEFINITIONS

§ 3-FLA:4 [Section 17 Definitions]

§ 3-FLA:6 General—"Court" § 3-FLA:7 —"Property"

III. SECTION 18 MATRIMONIAL HOME

A. LEGISLATION AND HISTORY

§ 3-FLA:8 [Section 18 Matrimonial Home]

B. GENERAL

- § 3-FLA:10 Overview
- § 3-FLA:11 Parties in the Residence Are Married: s. 18(1)

C. PROPERTY IN WHICH A PERSON HAS AN INTEREST: S. 18(1)

§ 3-FLA:12	General
§ 3-FLA:13	Contingent Beneficiary under a Trust
§ 3-FLA:14	Home Transferred to a Trust
§ 3-FLA:14.50	On Title in Capacity of a Trustee
§ 3-FLA:15	Inheritance After Separation
§ 3-FLA:16	Land on a Reserve
§ 3-FLA:17	Land under the Veterans' Land Act
§ 3-FLA:18	Lease
§ 3-FLA:19	License
§ 3-FLA:20	Life Interest Revoked Prior to Separation
§ 3-FLA:21	Real Property
§ 3-FLA:22	Second Home Found to Be a Matrimonial Home
§ 3-FLA:23	Temporary Home
§ 3-FLA:24	Vacant Lot
§ 3-FLA:25	A Vested Future Interest under a Deed

D. "PROPERTY AT THE TIME OF SEPARATION ORDINARILY OCCUPIED BY BOTH SPOUSES": S. 18(1)

- § 3-FLA:26 General
 § 3-FLA:27 The Meaning of Ordinarily Occupied
 § 3-FLA:28 Property Found to Be Ordinarily Occupied
 § 3-FLA:29 Property Not Found to Be Ordinarily Occupied
 § 3-FLA:30 Second Homes
 § 3-FLA:31 Cases in Which a Second Home Was Characterized as a Matrimonial Home
 § 3-FLA:32 Cases in Which a Second Home Was Not Characterized
- § 3-FLA:32 Cases in Which a Second Home Was Not Characterized as a Matrimonial Home

E. SHARES; PROPERTY USED FOR OTHER PURPOSES; FAMILY RESIDENCE OUTSIDE ONTARIO

§ 3-FLA:33 Ownership of Shares: s. 18(2)

Table of Contents

§ 3-FLA:34	Property Used for Other Purposes: s. 18(3)
§ 3-FLA:35	—Farm Property
§ 3-FLA:36	—Non-Farm Property
§ 3-FLA:37	Family Residence Outside Ontario

IV. SECTION 19 POSSESSION OF MATRIMONIAL HOME

§ 3-FLA:38	[Section 19 Possession of Matrimonial Home]
§ 3-FLA:40	General
§ 3-FLA:41	Termination of Possessory Rights—Upon Death
§ 3-FLA:42	—By Agreement
§ 3-FLA:43	Nature of Right to Possession—Not an Interest in Land
§ 3-FLA:44	—Bankruptcy
§ 3-FLA:45	—Does Not Include Contents

V. SECTION 20 DESIGNATION OF MATRIMONIAL HOME

§ 3-FLA:46	[Section 20 Designation of Matrimonial Home]
§ 3-FLA:48	General

VI. SECTION 21 ALIENATION OF MATRIMONIAL HOME

\$ 2 ET A.40	[Costion 91 Alienation of Matrimonial Home]
§ 3-FLA:49	[Section 21 Alienation of Matrimonial Home] General
§ 3-FLA:51	of office of the state of the s
§ 3-FLA:52	Disposing or Encumbering an Interest in the
	Matrimonial Home: s. 21(1)—General
§ 3-FLA:53	Disposing or Encumbering an Interest an the
	Matrimonial Home: s. 21(1)—Consent—s. 21(1)(a)
§ 3-FLA:54	—Release of Rights by a Separation Agreement—s.
	21(1)(b)
§ 3-FLA:55	—Court Order—s. 21(1)(c)
§ 3-FLA:56	—Property Not Designated by Both Spouses as a
	Matrimonial Home and a Designation of Another
	Property as a Matrimonial Home, Made by Both
	Spouses, Is Registered and Not Cancelled; s. 21(1)(d)
§ 3-FLA:57	Setting Aside Transaction: s. 21(2)—General
§ 3-FLA:58	—Transaction Set Aside
§ 3-FLA:59	—Transaction Not Set Aside
§ 3-FLA:60	Proof That Property Is Not a Matrimonial Home: s. 21(3)
§ 3-FLA:61	Attorney's Personal Knowledge: s. 21(4)
§ 3-FLA:62	Interests in Property by Operation of Law or Liens
_	Arising by the Operation of Law: s. 21(5)—Interest in
	Property by Operation of Law
§ 3-FLA:63	—Liens Arising by the Operation of Law
5	

VII. SECTION 22 RIGHT OF REDEMPTION AND TO NOTICE

§ 3-FLA:64	[Section 22 Right of Redemption and to Notice]
§ 3-FLA:66	General

xxvi

VIII. SECTION 23 POWERS OF COURT RESPECTING ALIENATION

§ 3-FLA:68	[Section 23 Powers of Court Respecting Alienation]
§ 3-FLA:70	General
§ 3-FLA:71	Who May Apply
§ 3-FLA:72	Withholding Consent: s. 23(b)—Jointly-Held Property
§ 3-FLA:73	—Solely Owned Property
§ 3-FLA:74	—Home Owned by One Spouse and a Third Party
§ 3-FLA:75	"Other Comparable Accommodation"
§ 3-FLA:76	Dispense with Notice: s. 23(c)
§ 3-FLA:77	Setting Aside Transaction: s. 23(d)
§ 3-FLA:78	—Transactions Set Aside
§ 3-FLA:79	—Transactions Not Set Aside
§ 3-FLA:80	Cancellation of a Designation under s. 20 (Designation of
	Matrimonial Home): s. 23(e)
§ 3-FLA:81	Miscellaneous

IX. SECTION 24 ORDER FOR POSSESSION OF MATRIMONIAL HOME

§ 3-FLA:82	[Section 24 Order for Possession of Matrimonial Home]
§ 3-FLA:84	Overview
§ 3-FLA:85	Criteria for Exclusive Possession Order
§ 3-FLA:86	Orders for Exclusive Possession Granted—Interim Orders Granted
§ 3-FLA:87	—Final Orders Granted
§ 3-FLA:88	Orders for Exclusive Possession Not Granted— Interim Orders Not Granted
§ 3-FLA:89	—Final Orders Not Granted
§ 3-FLA:90	Exclusive Possession Orders—Miscellaneous
§ 3-FLA:91	Exclusive Possession of Property, Including the Family Home, as an Incident of Support
§ 3-FLA:92	Occupation Rent
§ 3-FLA:93	Order for Exclusive Possession—Prerequisite for Order for Occupation Rent
§ 3-FLA:94	Other Prerequisites for Obtaining an Order for Occupation Rent
§ 3-FLA:95	Factors Governing Awards of Occupation Rent
§ 3-FLA:96	Occupation Rent Granted—Conduct of a Spouse
§ 3-FLA:97	—Expenses Paid by the Occupying Spouse
§ 3-FLA:98	—Delay
§ 3-FLA:99	—Title to Property
§ 3-FLA:100	—Occupation Rent Is an Exceptional Remedy
§ 3-FLA:101	—Period of Time Appropriate to Grant Occupation Rent
§ 3-FLA:102	—Set-Off

Table of Contents

§ 3-FLA:103	—Calculation of Occupation Rent
§ 3-FLA:103.50	Miscellaneous
§ 3-FLA:104	Occupation Rent Not Granted—Conduct of a Spouse
§ 3-FLA:105	—Best Interests of the Children
§ 3-FLA:106	—Expenses Paid by Occupying Spouse
§ 3-FLA:107	—Delay
§ 3-FLA:108	—Title of Property
§ 3-FLA:109	—Occupation Rent Is an Exceptional Remedy
§ 3-FLA:110	—Income of Spouse Taken into Consideration
§ 3-FLA:111	—Benefit to Non-Occupying Spouse
§ 3-FLA:112	—Set-Off
§ 3-FLA:113	Contents of Home

X. SECTION 25 VARIATION OF POSSESSORY ORDER

§ 3-FLA:114	[Section 25	Variation	of Possessory	Order]
-------------	-------------	-----------	---------------	--------

§ 3-FLA:116 General

XI. SECTION 25.1 ORDER REGARDING CONDUCT

§ 3-FLA:117	Section	25 1	Order	Regarding	Conduct	
8 9-1 LA.111	Decidon	40.1	Oruei	negarumg	Conducti	

§ 3-FLA:118 Order Regarding Conduct

XII. SECTION 26 JOINT TENANCY IN MATRIMONIAL HOME

8	3	-FT.Δ·119	Section	26 Joint	Tonancy in	Matrimonial	Homel
_		-r L/A 119	DOCULOR				

§ 3-FLA:121 General

XIII. SECTION 27 REGISTRATION OF ORDER

§ 3-FLA:122 [Section 27 Registration of Order]

XIV. SECTION 28 APPLICATION OF PART

§ 3-FLA:124	[Section 2	28 Application	of Part]

§ 3-FLA:126 General

CHAPTER 4-FLA. PART III SUPPORT OBLIGATIONS

I. SECTION 29 DEFINITIONS

§ 4-FLA:1	[Section 29 Definitions]
§ 4-FLA:3	Threshold Entitlement to Spousal Support and
	Background of s. 29
§ 4-FLA:4	Married Persons
8 4-FLA:5	Unmarried Persons (General)

§ 4-FLA:6 Who Are Not the Parents of a Child
§ 4-FLA:7 —End of Cohabitation
§ 4-FLA:8 —Subjective Versus Objective Test
§ 4-FLA:9 Who Are the Parents of a Child

II. SECTION 30 OBLIGATION OF SPOUSES FOR SUPPORT

- § 4-FLA:10 [Section 30 Obligation of Spouses for Support]
- § 4-FLA:12 Self-Support
- § 4-FLA:13 Ability to Pay Support
- § 4-FLA:14 Need for Support
- § 4-FLA:15 Compensatory Support
- § 4-FLA:16 Defence Delay
- § 4-FLA:17 The Causal Connection Test: Support Law under the Family Law Act—No Longer Applicable
- § 4-FLA:18 Miscellaneous
- § 4-FLA:19 Practice and Procedure

III. SECTION 31 OBLIGATION OF PARENT TO SUPPORT CHILD

- § 4-FLA:20 [Section 31 Obligation of Parent to Support Child]
- § 4-FLA:22 Obligation of Parent to Support Child
- § 4-FLA:23 Parent—Biological or Adoptive Parent
- § 4-FLA:24 Obligation of Parent to Support a Disabled Child
- § 4-FLA:25 —Cases in Which Child Supported Was Not Granted for a Disabled Adult Child
- § 4-FLA:26 —Cases in Which Child Supported Was Granted for a Disabled Adult Child
- § 4-FLA:27 —Quantum of Child Support—Disabled Adult Child
- § 4-FLA:28 Parent "by Settled Intention" (FLA, s. 1)
- § 4-FLA:29 Support Recipient
- § 4-FLA:30 —Child Applying for Support
- § 4-FLA:31 —Support Payment Directly to the Child
- § 4-FLA:32 Enrolment in a Full-Time Program of Education (FLA, s. 31(1))—Support Continued
- § 4-FLA:33 —Support Not Continued
- § 4-FLA:34 Withdrawal from Parental Control
- § 4-FLA:35 Parent/Child Relationship

IV. SECTION 32 OBLIGATION OF CHILD TO SUPPORT PARENT

- § 4-FLA:36 [Section 32 Obligation of Child to Support Parent]
- § 4-FLA:38 General

V. SECTION 33 ORDER FOR SUPPORT

A. LEGISLATION AND HISTORY

§ 4-FLA:39 [Section 33 Order for Support]

B. ORDER FOR SUPPORT—GENERAL

- § 4-FLA:41 Overview
- § 4-FLA:42 Support—Family Law Act and Divorce Act
- § 4-FLA:43 Effect of Parties' Reconciliation
- § 4-FLA:44 Applicants for Support (ss. 33(2), (3))

C. SETTING ASIDE PROVISIONS FOR SUPPORT OR WAIVERS OF THE RIGHT TO SUPPORT IN DOMESTIC CONTRACTS (S. 33(4))

- § 4-FLA:45 Overview
- § 4-FLA:46 General
- § 4-FLA:47 Unconscionable Circumstances (s. 33(4)(a))
- \$4-FLA:48 Spouse Qualifying for Support Out of Public Funds (s. 33(4)(b))
- § 4-FLA:49 Default (s. 33(4)(c))
- § 4-FLA:50 Adding Third Parties (s. 33(5), (6))
- § 4-FLA:51 Purpose of Child Support Orders (s. 33(7))
- § 4-FLA:52 Purpose of Spousal Support Orders (s. 33(8))—General

D. DETERMINATION OF AMOUNT (SUBS. 33(9))

- § 4-FLA:53 Overview
- \$4-FLA:54 Assets and Means of the Dependant and Respondent (s. 33(9)(a) and (b))
- § 4-FLA:55 Capacity for Self Support (s. 33(9)(c))
- § 4-FLA:56 Ability to Pay Support (s. 33(9)(d))
- § 4-FLA:57 Parties' Ages and Physical and Mental Health (s. 33(9)(e))
- § 4-FLA:58 Need/Standard of Living (s. 33(9)(f))
- § 4-FLA:59 Legal Obligation to Support Another Person (s. 33(9)(h))
- § 4-FLA:60 Contribution by the Dependant to the Realization of the Respondent's Career Potential (s. 33(9)(j))
- § 4-FLA:61 Length of Cohabitation (s. 33(9)(l)(i))
- § 4-FLA:62 Effect on Earning Capacity of Responsibilities Assumed During Cohabitation (s. 33(9)(1)(ii))
- § 4-FLA:63 Other Legal Right to Support (s. 33(9)(m))
- § 4-FLA:64 Duration of Support
- § 4-FLA:65 —Retroactive Spousal Support
- § 4-FLA:66 —Duration—Other
- § 4-FLA:67 Unconscionable Conduct (s. 33(10))
- § 4-FLA:68 Miscellaneous

G. RETROACTIVE ORDERS

1. General

- § 4-FLA:96 Overview
- § 4-FLA:97 Retroactive Child Support
- § 4-FLA:98 Meaning of Retroactive
- § 4-FLA:99 Availability of Retroactive Orders
- § 4-FLA:100 Objectives

2. Factors

- § 4-FLA:101 Overview
- § 4-FLA:102 Factors—Delay
- § 4-FLA:103 —The Conduct of the Parent
- § 4-FLA:104 —The Circumstances of the Children
- § 4-FLA:105 —The Hardship the Retroactive Award Might Entail
- § 4-FLA:106 Other Factors—General
- § 4-FLA:107 —Using Capital or Incurring Debt
- § 4-FLA:108 —Lump Sum Support
- § 4-FLA:109 The Commencement Date for Retroactive Child Support
- § 4-FLA:110 Jurisdiction under Both the *Divorce Act* and Provincial Legislation
- § 4-FLA:111 Whether Same Principles Apply Federally and Provincially
- § 4-FLA:112 Guideline Formulas or Court's Discretion
- § 4-FLA:113 Retroactive Child Support Ordered—Examples
- § 4-FLA:114 No Retroactive Child Support Ordered—Examples
- § 4-FLA:115 Section 7 Expenses
- § 4-FLA:116 Interim Orders
- § 4-FLA:117 Miscellaneous
- § 4-FLA:118 Retroactive Spousal Support

H. PRIORITY OF CHILD SUPPORT: FAMILY LAW ACT: (S. 38(1))

§ 4-FLA:119 General

VI. SECTION 34 POWERS OF COURT

A. LEGISLATION; GENERAL

- § 4-FLA:120 [Section 34 Powers of Court]
- § 4-FLA:122 Powers of Court—General
- § 4-FLA:123 General—Cases

B. TYPES OF ORDERS

- § 4-FLA:124 Interim Orders (s. 34(1))—Interim Spousal Support
- § 4-FLA:125 —Interim Child Support
- § 4-FLA:126 —Interim Disbursements
- § 4-FLA:127 Indefinite or Limited Period (s. 34(1)(a))

§ 4-FLA:159

§ 4-FLA:128	Periodic or Lump Sum Awards (s. 34(1)(b))—General
§ 4-FLA:129	—Lump Sum Awarded
§ 4-FLA:130	—Lump Sum Support Award Refused
§ 4-FLA:131	Miscellaneous
§ 4-FLA:132	Transfer of Property, Placing Property in Trust, Vesting of Property (s. 34(1)(c))—Transfer of Property
§ 4-FLA:133	—Placing Property in Trust
§ 4-FLA:134	—Vesting of Property
§ 4-FLA:135	Matters Authorized under s. 24 (s. 34(1)(d))
§ 4-FLA:136	Money Payable under the Order to Be Paid into Court or to Another Appropriate Person (s. 34(1)(e))
§ 4-FLA:137	Retroactive Support—Support in Respect to Period Before Date of Order (s. 34(1) (f))
§ 4-FLA:138	—Retroactive Spousal Support—Support Prior to Date of Order
§ 4-FLA:139	—Retroactive Child Support—Child Support Prior to Date of Order
§ 4-FLA:140	Reimbursement to Agency (s. 34(1)(g))
§ 4-FLA:141	Prenatal Care and Birth Expenses (s. 34(1)(h))
§ 4-FLA:142	Life Insurance (s. 34(1)(i))
§ 4-FLA:143	Pension Plan or other Benefit Plan (s. 34(1)(j))
§ 4-FLA:144	Securing Payments (s. 34(1)(k))
	MITATION; ORDERS BINDING ESTATES; DEXING
§ 4-FLA:145	Limitation (s. $34(2)$)
§ 4-FLA:146	Orders Binding Estates (s. 34(4))
§ 4-FLA:147	Indexing of Support Payments (s. 34(5))
§ 4-FLA:148	Indexation of Orders (s. 34(6))
D. OT	HER ORDERS; APPEALS; PROCEDURE
§ 4-FLA:149	Other Orders
§ 4-FLA:150	Appeals from Support Orders
§ 4-FLA:151	Procedure
VII. SECT	TION 35 CURRENCY
§ 4-FLA:152	[Section 35 Currency]
§ 4-FLA:154	General
§ 4-FLA:155	Cases
VIII. SEC	TION 36 EFFECT OF DIVORCE PROCEEDING
§ 4-FLA:156	[Section 36 Effect of Divorce Proceeding]
§ 4-FLA:158	
IX. SECTI	ION 37 APPLICATION FOR VARIATION

[Section 37 Application for Variation]

§ 4-FLA:161	Variation of Support Orders—General
§ 4-FLA:162	Spousal Support—Case Law—Jurisdiction and Procedure
§ 4-FLA:163	Applicants for Support
§ 4-FLA:164	Spousal Support—Material Change in Circumstances
§ 4-FLA:165	— — Material Change in Circumstances Found
§ 4-FLA:166	——Material Change in Circumstances Not Found
§ 4-FLA:167	—Variation and Agreements/Settlements
§ 4-FLA:168	—Evidence Not Available on Previous Hearing
§ 4-FLA:169	—Interim Orders
§ 4-FLA:170	—Miscellaneous
§ 4-FLA:171	—Arrears
§ 4-FLA:172	Retroactive Spousal Support
§ 4-FLA:173	Child Support—Variation
§ 4-FLA:174	Child Support—General—Cases
§ 4-FLA:175	—Practice and Procedure
§ 4-FLA:176	Varying a Support Provision in an Agreement as if It Were an Order
§ 4-FLA:177	Child Support—Special Provisions
§ 4-FLA:178	Interim Orders Varying Child Support
§ 4-FLA:179	Variation of Time-Limited Orders
§ 4-FLA:180	Variation of Payment Terms of a Child Support Order
§ 4-FLA:181	Retroactive Child Support
§ 4-FLA:182	Child Support—Variation to Decrease and Arrears
§ 4-FLA:182.50	Recission of Arrears
§ 4-FLA:183	Variation and Appeals
§ 4-FLA:184	Variation—Examples—Granted
§ 4-FLA:185	—Variations Denied

X. SECTION 38 INDEXING EXISTING ORDERS

- § 4-FLA:186 [Section 38 Indexing Existing Orders]
- § 4-FLA:188 General

XI. SECTION 38.1 PRIORITY TO CHILD SUPPORT

- § 4-FLA:189 [Section 38.1 Priority to Child Support]
- § 4-FLA:191 Priority to Child Support

XII. SECTION 39 ADMINISTRATIVE CALCULATION OF CHILD SUPPORT

- § 4-FLA:192 [Section 39 Administrative Calculation of Child Support]
- § 4-FLA:194 General

XIII. SECTION 39.1 ADMINISTRATIVE RECALCULATION OF CHILD SUPPORT

§ 4-FLA:195 [Section 39.1 Administrative Recalculation of Child Support]

§ 4-FLA:197 General

XIV. SECTION 40 RESTRAINING ORDERS

- § 4-FLA:198 [Section 40 Restraining Orders]
- § 4-FLA:200 General

XV. SECTION 41 FINANCIAL STATEMENT

- § 4-FLA:201 [Section 41 Financial Statement]
- § 4-FLA:203 General

XVI. SECTION 42 ORDER FOR RETURN BY EMPLOYER

- § 4-FLA:204 [Section 42 Order for Return by Employer]
- § 4-FLA:206 General

XVII. SECTION 43 ARREST OF ABSCONDING DEBTOR

- § 4-FLA:207 [Section 43 Arrest of Absconding Debtor]
- § 4-FLA:209 General

XVIII. SECTION 44 PROVISIONAL ORDERS

- § 4-FLA:210 [Section 44 Provisional Orders]
- § 4-FLA:212 General

XIX. SECTION 45 PLEDGING CREDIT FOR NECESSITIES

§ 4-FLA:213 [Section 45 Pledging Credit for Necessities]

XX. SECTION 46 RESTRAINING ORDER

- § 4-FLA:215 [Section 46 Restraining Order]
- § 4-FLA:217 General
- § 4-FLA:218 Restraining Order Granted—One Parent Abusive to the Other Parent or to His or Her Child
- § 4-FLA:219 —Where One Spouse or Child Perceives He or She Is in an Abusive Relationship Whether or Not This Is the
- § 4-FLA:220 —Where One Party Refuses to Accept the End of a Relationship
- § 4-FLA:221 —Internet-Related Issues
- § 4-FLA:222 —Other Circumstances
- § 4-FLA:223 —Miscellaneous Issues
- § 4-FLA:224 Restraining Order Not Granted—Conduct Not Sufficiently Serious
- § 4-FLA:225 —Conduct Had Ceased a Significant Amount of Time Before the Hearing
- § 4-FLA:226 —Other

XXI. SECTION 47 APPLICATION UNDER CHILDREN'S LAW REFORM ACT

 $\$ 4-FLA:227 [Section 47 Application Under Children's Law Reform Act]

XXII. SECTION 47.1 ORDER REGARDING CONDUCT

§ 4-FLA:229	[Section 47.1 Order Regarding Conduct]
§ 4-FLA:230	General
§ 4-FLA:230.30	[Section 47.2 Duties of Parties]
§ 4-FLA:230.50	[Section 47.3 Duties of Legal Advisers]
§ 4-FLA:230.70	[Section 47.5 Duties of Court]

XXIII. SECTION 48 APPEAL FROM ONTARIO COURT (PROVINCIAL DIVISION)

§ 4-FLA:231	[Section 48 Appeal From Ontario Court (Provincial
	Division)]
§ 4-FLA:233	Appeals in General

XXIV. SECTION 49 CONTEMPT OF ORDERS OF ONTARIO COURT OF JUSTICE

§ 4-FLA:234	[Section 49 Contempt of Orders of Ontario Court of
	Justice]
8 4-FL A · 236	General

XXV. SECTION 50 LIMITATION [REPEALED]

§ 4-FLA:237	[Section 50 Repealed]
§ 4-FLA:239	No Limitation Period

CHAPTER 5-FLA. PART IV DOMESTIC CONTRACTS

I. RELATED SECTIONS

§ 5-FLA:1 Related Sections

II. SECTION 51 DEFINITIONS

§ 5-FLA:2	Historical Background
§ 5-FLA:3	[Section 51 Definitions]
§ 5-FLA:5	Overview of Domestic Contracts
§ 5-FLA:6	Definition of a Family Arbitration Agreement

III. SECTION 52 MARRIAGE CONTRACTS

A. LEGISLATION AND HISTORY; GENERAL

§ 5-FLA:7 [Section 52 Marriage Contracts]

xxxiv

§ 5-FLA:9	Related Sections
§ 5-FLA:10	Parties to a Marriage Contract
B. W.	HAT MAY BE COVERED
§ 5-FLA:11	Ownership in or Division of Property (s. $52(1)(a)$)
§ 5-FLA:12	Support Obligations (s. $52(1)(b)$)
§ 5-FLA:13	Direction of Education and Moral Training (s. $52(1)(c)$)
§ 5-FLA:14	"Any Other Matter in the Settlement of the Parties' Affairs" (s. $52(1)(d)$)
§ 5-FLA:15	Part II: Matrimonial Home Rights (s. 52(2))
§ 5-FLA:16	Termination of Marriage Contracts
§ 5-FLA:17	Cohabitation Agreement Becomes Marriage Contract
§ 5-FLA:18	Setting Aside Marriage Contracts
§ 5-FLA:19	Disclosure Requirement
§ 5-FLA:20	Miscellaneous
C. W	HAT MAY BE COVERED
§ 5-FLA:21	Ownership in or Division of Property (s. $52(1)(a)$)
§ 5-FLA:22	Support Obligations (s. $51(1)(b)$)
§ 5-FLA:23	Direction of Education and Moral Training (s. $52(1)(c)$)
§ 5-FLA:24	"Any Other Matter in the Settlement of the Parties' Affair" (s. $52(1)(d)$)
§ 5-FLA:25	Termination of Marriage Contracts
§ 5-FLA:26	Setting Aside Marriage Contracts
D. PA	ART II: MATRIMONIAL HOME RIGHTS (S. 52(2))
§ 5-FLA:27	Overview
3 0 1 111.21	0.02.72017
IV. SECT	TION 53 COHABITATION AGREEMENTS
8 5 FI A.99	[Section 52 Cohabitation Agreements]

§ 5-FLA:28	[Section 53 Cohabitation Agreements]
§ 5-FLA:30	Parties to a Cohabitation Agreement
§ 5-FLA:31	When the Provisions Take Effect
§ 5-FLA:32	What May Be Covered
§ 5-FLA:33	Ownership in or Division of Property
§ 5-FLA:34	Support Obligation
§ 5-FLA:35	Direction and Moral Education
§ 5-FLA:36	Where the Parties Marry
§ 5-FLA:37	Effect of Cohabitation Agreement with Partner on Support Claim from Spouse or Former Spouse
§ 5-FLA:38	Refusing to Enforce Cohabitation Agreements or Setting Them Aside

V. SECTION 54 SEPARATION AGREEMENTS

§ 5-FLA:39	[Section 54 Separation Agreements]
§ 5-FLA:41	Separation Agreements Not as Limited as Marriage
	Contracts and Cohabitation Agreements

§ 5-FLA:42	Who May Enter into a Separation Agreement
§ 5-FLA:43	What Constitutes a Separation Agreement
§ 5-FLA:44	What Is Not a Separation Agreement
§ 5-FLA:45	Separation Agreement as a Defence
§ 5-FLA:46	Effect of Reconciliation on Separation Agreement
§ 5-FLA:47	Jurisdiction and Procedural Issues—Jurisdiction Issues
§ 5-FLA:48	—Bifurcating the Proceedings
§ 5-FLA:49	—Other Issues

VI. SECTION 55 FORM OF CONTRACT

§ 5-FLA:50	[Section 55 Form of Contract]
§ 5-FLA:52	Formal Requirements
§ 5-FLA:53	—General
§ 5-FLA:54	—Contract Valid and Enforceable
§ 5-FLA:55	Contract Valid But Unenforceable
§ 5-FLA:56	Formal Requirements—Contract Void and Unenforceable
§ 5-FLA:57	Enforceable Contracts Outside the Definition of Domestic Contracts
§ 5-FLA:58	Termination of Domestic Contracts
§ 5-FLA:59	Domestic Contracts: Releases Against Spouse's Estate
§ 5-FLA:60	Capacity of Minors (s. 55(2))
§ 5-FLA:61	Mentally Incapable Person (s. 55(3) and (4))

VII. SECTION 56 PROVISIONS THAT MAY BE SET ASIDE OR DISREGARDED

A. LEGISLATION AND HISTORY

§ 5-FLA:62 [Section 56 Provisions That May Be Set Aside or Disregarded]

B. GENERAL

```
    § 5-FLA:64 Children (s. 56(1))
    § 5-FLA:65 Children—Child Support (s. 56(1.1))
    § 5-FLA:66 Dum Casta Clauses (ss. 56(2) and (3))
```

C. SETTING ASIDE DOMESTIC CONTRACTS (S. 56(4))

```
§ 5-FLA:67
             General
§ 5-FLA:68
             Cases
            Failure to Disclose Financial Circumstances (s. 56(4)(a))
§ 5-FLA:69
§ 5-FLA:70
            —General
§ 5-FLA:71
            —Agreement Upheld
§ 5-FLA:72
            —Agreement Set Aside Due to Failure to Disclose
            Failure to Understand the Nature or Consequences of
§ 5-FLA:73
             the Domestic Contract (s. 56(4)(b))
§ 5-FLA:74
             —Agreement Upheld
§ 5-FLA:75
            —Agreement Set Aside
```

xxxvi

D. "SETTING ASIDE DOMESTIC CONTRACTS— OTHERWISE IN ACCORDANCE WITH THE LAW OF CONTRACT" (S. 56(4)(C))

```
§ 5-FLA:76
              General
§ 5-FLA:77
             Undue Influence
§ 5-FLA:78
             —General
§ 5-FLA:79
             -Agreement Upheld
§ 5-FLA:80
             -Agreement Set Aside
§ 5-FLA:81
             Duress
§ 5-FLA:82
             —General
             -Agreement Upheld
§ 5-FLA:83
§ 5-FLA:84
              —Agreement Set Aside
§ 5-FLA:85
             Misrepresentation—Agreement Upheld
§ 5-FLA:86
             -Agreement Set Aside
             Fraud—Agreement Upheld
§ 5-FLA:87
§ 5-FLA:88
             —Non Est Factum
§ 5-FLA:89
             Mistake
§ 5-FLA:90
             —Agreement Upheld
§ 5-FLA:91
              —Agreement Set Aside or Void
             Lack of Consideration
§ 5-FLA:92
§ 5-FLA:93
             Ambiguity and Uncertainty
             Unconscionable Transactions
§ 5-FLA:94
§ 5-FLA:95
             —General
§ 5-FLA:96
             —Agreement Upheld (or Set Aside on Other Grounds)
             -Agreement Set Aside or Void
§ 5-FLA:97
             Miscellaneous—General
§ 5-FLA:98
§ 5-FLA:99
             —Agreement Upheld
§ 5-FLA:100
             -Agreement Set Aside
```

E. BARRIERS TO REMARRIAGE (SS. 56(5), (6) AND (7))

§ 5-FLA:101 General

VIII. SECTION 56.1 PROVISIONS RE PENSION PLAN

§ 5-FLA:102 [Section 56.1 Provisions Re Pension Plan]

§ 5-FLA:103 General

IX. SECTION 57 RIGHTS OF DONORS OF GIFTS

§ 5-FLA:104 [Section 57 Rights of Donors of Gifts]

§ 5-FLA:106 General

X. SECTION 58 CONTRACTS MADE OUTSIDE ONTARIO

§ 5-FLA:107 [Section 58 Contracts Made Outside Ontario]

§ 5-FLA:109 General

XI. SECTION 59 PATERNITY AGREEMENTS

§ 5-FLA:110 [Section 59 Paternity Agreements]

§ 5-FLA:112 General

XII. SECTION 59.1 FAMILY ARBITRATIONS, AGREEMENTS AND AWARDS

§ 5-FLA:113 [Section 59.1 Family Arbitrations, Agreements and Awards]

XIII. SECTION 59.2 OTHER THIRD-PARTY DECISION-MAKING PROCESSES IN FAMILY MATTERS

§ 5-FLA:114 [Section 59.2 Other Third-Party Decision-Making Processes in Family Matters]

XIV. SECTION 59.3 CONTRACTING OUT

§ 5-FLA:115 [Section 59.3 Contracting Out]

XV. SECTION 59.4 NO AGREEMENT IN ADVANCE OF DISPUTE

§ 5-FLA:116 [Section 59.4 No Agreement in Advance of Dispute]

XVI. SECTION 59.4.1 AWARD RE PENSION PLAN

§ 5-FLA:117 [Section 59.4.1 Award Re Pension Plan]

XVII. SECTION 59.5 [REPEALED]

§ 5-FLA:118 [Section 59.5 Repealed]

XVIII. SECTION 59.6 CONDITIONS FOR ENFORCEABILITY

§ 5-FLA:119 [Section 59.6 Conditions for Enforceability]

XIX. SECTION 59.7 SECONDARY ARBITRATION

§ 5-FLA:120 [Section 59.7 Secondary Arbitration]

XX. SECTION 59.8 ENFORCEMENT

- § 5-FLA:121 [Section 59.8 Enforcement]
- § 5-FLA:122 General
- § 5-FLA:123 Case Law—General
- § 5-FLA:124 —Other Third-Party Decision-Making Processes in Family Matters (s. 59.2)
- § 5-FLA:125 —Conditions for Enforceability (s. 59.6)
- § 5-FLA:126 —Secondary Arbitration (s. 59.7)
- § 5-FLA:127 —Enforcement (s. 59.8)
- § 5-FLA:128 Practice and Procedure—Stay of Proceedings

XXI. SECTION 60 APPLICATION OF ACT TO EXISTING CONTRACTS

§ 5-FLA:129 [Section 60 Application of Act to Existing Contracts]

xxxviii

§ 5-FLA:131	General
§ 5-FLA:132	Application of Act to Existing Contracts
§ 5-FLA:133	Transfer of Property Before March 31, 1978 (s. 60(3))

CHAPTER 6-FLA. PART V DEPENDANTS' CLAIM FOR DAMAGES

I. SECTION 61 RIGHT OF DEPENDANTS TO SUE IN TORT

[Section 61 Right of Dependants to Sue in Tort]
General
Retroactivity
Who May Claim
Derivative Nature of Claim
"Fault or Neglect"
Limitation Periods—General
—When Does Cause of Action Arise
—Relevant Limitation Period
—Onus of Proving Prejudice
—Amendment of Claim After Expiry of Limitation Period
Pecuniary Loss
Damages for Loss of Guidance, Care and Companionship
Allowance for Housekeeping

II. SECTION 62 OFFER TO SETTLE FOR GLOBAL SUM

§ 6-FLA:16 [Section 62 Offer to Settle for Global Sum]

III. SECTION 63 ASSESSMENT OF DAMAGES, INSURANCE

§ 6-FLA:18 [Section 63 Assessment of Damages, Insurance]

CHAPTER 7-FLA. PART VI AMENDMENTS TO THE COMMON LAW

I. SECTION 64 UNITY OF LEGAL PERSONALITY ABOLISHED

§ 7-FLA:1 [Section 64 Unity of Legal Personality Abolished]

II. SECTION 65 ACTIONS BETWEEN PARENT AND CHILD

§ 7-FLA:4 [Section 65 Actions between Parent and Child]

III. SECTION 66 RECOVERY FOR PRE-NATAL INJURIES

§ 7-FLA:6 [Section 66 Recovery for Pre-Natal Injuries]

IV. SECTION 67 DOMICILE OF MINOR

§ 7-FLA:8 [Section 67 Domicile of Minor]

V. SECTION 68 PARENTAL LIABILITY FOR TORTS OF CHILD [REPEALED]

§ 7-FLA:10 [Section 68 Repealed]

CHAPTER 8-FLA. GENERAL

I. SECTION 69 REGULATIONS

§ 8-FLA:1 [Section 69 Regulations]

II. SECTION 70 TRANSITION

§ 8-FLA:3 [Section 70 Transition]

§ 8-FLA:5 General

§ 8-FLA:6 —Additional Cases

§ 8-FLA:7 Interpretation of Existing Contracts

§ 8-FLA:8 —Additional Cases

Appendix 4-FLA-F. Child Support Guidelines (Ontario)

Appendix 8-FLA-A. Ontario Regulation 190/15 Administrative

Calculation and Recalculation of Child Support

Table of Cases

Index