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### FAMILY LAW IN ONTARIO

Michael G. Cochrane

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#### What's New in this Update:

This release features updates to Appendix C (Proof of Facts).

#### Highlights

- **§ C:1. Enforceability of Premarital Domestic Contract Based on Fairness of Terms and Circumstances of Execution** — A domestic contract is an agreement between two parties before they enter into a form of marriage. It deals with the private ordering of relationships in the event of marriage breakdown, such as the division of assets and provision for spousal support. This article focuses on domestic contracts made before marriage and the enforceability of such contracts. Domestic contracts concluded before marriage are often called “marriage contracts”, and these agreements can set out mutual expectations about property, provide for unequal division of matrimonial property upon separation as well as delineating what support arrangements should be expected if the marriage ends.

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- **§ C:2. Proving Property Rights and Other Entitlements of Non-Marital Cohabitants** — This article considers how to prove the property and other rights of unmarried cohabitants in Canada. Since the middle of the 20th century, cohabitation between unmarried partners has been growing as a family form in Canada. There has been a general expansion of marital rights and responsibilities to unmarried cohabiting individuals, although there are important exceptions to this, particularly with respect to property law. In most Canadian provinces and territories, common law spouses have no statutory entitlement to property rights and therefore, generally, cannot make an application to share in property. This article discusses the exceptions to this principle, such as claims in equity and circumstances where there is a joint family venture.
- **§ C:3. Proof of Child's Withdrawal from Parental Control/Charge in Order to Terminate Child Support** — This article discusses what acts and circumstances of a child will, and will not, terminate a parent's obligation to support that child. In doing so, it will outline both the federal and provincial (Ontario) statutes and case law that define the acts that allow a court to find that a child has withdrawn from a parent's charge or control. Issues relating to quantum of child support, including calculations pursuant to the Federal and Ontario Child Support Guidelines, are beyond the scope of this article. This article does not discuss applications under the dependency relief sections of the *Suc-cession Law Reform Act*, R.S.O. 1990, c. S.26.
- **§ C:4. Proof of Adultery As a Basis for Establishing the Breakdown of Marriage** — This article will discuss proof of adultery as a basis for establishing the breakdown of a marriage, including the defences of condonation and connivance. In addition to checklists detailing the elements of the establishment of adultery, condonation and connivance, this article presents illustrative testimony necessary to establish that adultery has been committed, and to establish the defences of condonation and connivance.
- **§ C:5. Spousal Support on Termination of Marriage** — Spousal support evolved from alimony, a common law remedy, which, under certain circumstances, required husbands to support their wives after divorce or separation. Unlike alimony, spousal support is today available to husbands and to members of same-sex marriages in addition to wives. Also, unlike alimony, spousal support is a purely statutory remedy: James C. MacDonald & Lee K. Ferrier, *Canadian Divorce Law And Practice*, loose-leaf, 2nd ed. (Toronto: Carswell, 1988) at Pt. I [MacDonald]. This article is concerned solely with establishing the right to permanent spousal support, in connection with dissolution of a valid marriage, and the factors that influence the amount of that support. It does not deal with interim support, child support, separate maintenance, annulment, non-marital support awards, or modification or appeal of a support order. For reasons of simplicity and overlap, this article does not deal specifically with the various provincial legislative support regimes, but rather focuses exclusively on the federal spousal support system under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [Divorce Act]. The remedy of spousal support is also available under provincial and territorial family law legislation. The general principles of the law are the same under both types of statutory authority, with certain exceptions. The most important difference is that provincial legislation allows spousal support claims between parties who have never been married or who have never been divorced.