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DOMESTIC CONTRACTS, 2ND ED.

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This text contains the expert analysis and commentary, practical guidance, and sophisticated materials you need to draft effective domestic agreements. Domestic Contracts includes checklists, many sample agreements (including marriage agreements, cohabitation agreements and separation agreements), numerous additional clauses, case annotations, as well as authoritative commentary and relevant case law.

What's New in this Update

This release features updates to Chapter 5 (Separation Agreements).

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Highlights

- **Parenting Plan—Variation of Parenting Time and Decision-making Responsibilities for Child—Appointment and Removal of Guardian**—Parties were divorced parents of 16-year-old child—When child was four years old, parties agreed to a Parenting Plan—Parties modified parenting schedule and plan from time to time until 2020, when child was in Grade 8—Child became preoccupied with social media and was failing at school—Mother and child had no contact after November 2020—Child presently lived with father in household that included father’s partner K—Child was doing much better—However, father was diagnosed with prostate cancer—Father brought application to add K as guardian of child and remove mother as guardian of child—Application granted in part—What was at stake was not guardianship, but rather parenting time and decision-making authority—Only consideration was best interests of child—Child had tenuous relationship with mother—Child would not currently accept exercise of parental decision making or discipline by mother—Child viewed K as logical, sensible, and honest—Child wanted to be parented by father and K, if father was incapacitated or died—Unless and until child decided otherwise, child should have parenting time with father and K at father’s home and father and K would share parenting responsibilities for child—If child wished to visit with mother, there was no requirement that visits be supervised—Mother would not have parenting responsibilities for child but was entitled to be informed of educational achievements and significant milestones in child’s life with child’s consent: *H. (M.H.) v. E. (J.)*, 2023 BCSC 922, 2023 CarswellBC 1619 (B.C. S.C.)
- **Separation Agreements—Child Support—Case Law**—Parents had two children, ages 12 and 13 and sought application for divorce order and corollary orders related to settlement reached by parents—Parents proposed order that provided child support be set at \$0 and prevented any application to vary until 2028—Evidence suggested child support amount was based on parents’ current income levels—Proposed agreement would have prevented variation of child support even in event of material change of circumstance for either parent—Parents brought application for consent order for divorce—Order stayed—Parents had to make reasonable arrangements for children of marriage before divorce order could be granted—Any agreement whereby parents could not seek to vary child support in event of material change could not be given effect—Non-enforcement clause related to child support undermines fact that child support is right of children—Parents’ agreement was contrary to public policy: *W. (L.) v. W. (F.)*, 2022 BCSC 642, 2022 CarswellBC 1026, 2022 A.C.W.S. 1137, 71 R.F.L. (8th) 307 (B.C. S.C.)
- **Separations Agreements—Ownership of Property—Failure to Make Settlement Payment on Time—Repudiation of Contract—Case Law**—In August 2021, parties signed comprehensive and final settlement agreement dealing with issues of parenting, support and property division—Both parties had independent legal counsel—Settlement provided respondent would pay settlement amount no later than September 15, 2021—Mother was unable to make payment in time due

to financing issues from her bank—Mother drafted consent order required by minutes of settlement—Consent order contained new terms regarding parenting and transfer of matrimonial property—Father expressed that he felt their settlement agreement was financially unfair for him—Father refused to sign despite subsequent drafts that rectified parenting amendments and committing respondent to payment of settlement—Mother brought summary trial application for divorce and order enforcing settlement agreement—Application granted—Court found parties entered fair and equitable contract—Disputed provision in consent order was promptly corrected—Court rejected mother having repudiated the settlement agreement—Father misguidedly held up proceedings by insisting on larger settlement payout—Minor delays were not uncommon: **Kosky v. Bratkowski**, 2022 BCSC 103, 2022 CarswellBC 655, 2022 A.C.W.S. 1375 (B.C. S.C.)

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