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DOMESTIC CONTRACTS, 2ND ED.

Hugh G. Stark & Kirstie J. MacLise

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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 1 (Preliminary Considerations), Chapter 2 (Marriage Agreements), Chapter 3 (Cohabitation Agreements), Chapter 4 (Same Sex Cohabitation Agreements), Chapter 5 (Separation Agreements) and Chapter 6 (Parenting Agreements).

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Highlights

This release includes the following new case law:

- In *F.W. v. D.B.*, 2024 ONSC 4823 (Ont. S.C.J.), the issue was the various Ontario courts' respective jurisdiction under the *Family Law Act* to enforce a separation agreement. The mother in that case filed an application with the Ontario Superior Court of Justice to enforce specific terms of a separation agreement, ostensibly pursuant to s. 35 of the *Family Law Act*. That provisions states that a person who is a party to a domestic contract may (not must) file the contract with the clerk of the Ontario Court of Justice or of the Family Court of the Superior Court of Justice, and that a provision for support of a child may be enforced or recalculated. She nonetheless asserted that the Ontario Superior Court of Justice had inherent jurisdiction to hear her motion for enforcement, as it had general jurisdiction over criminal, civil and family proceedings arising from common law traditions; she also argued that s. 35 does not oust the jurisdiction of the Superior Court of Justice to address issues over which it otherwise has jurisdiction. The court ruled that the proper venue was the Ontario Court of Justice. In doing so, it commented on the prevailing problems with the current two-tier judicial system in Ontario for hearing Family matters, including that it unduly complicates matters for family litigants. It leaves them vulnerable, especially during time-sensitive situations where they must navigate a complex legal framework to receive the assistance they need. The court stressed the pressing need for a Unified Family Court across all Ontario regions.
- In *Kyle v. Atwill*, 2020 ONCA 476, 1 52 O.R. (3d) 59 (Ont. C.A.), leave to appeal refused 2021 CarswellOnt 3739, 2021 CarswellOnt 3738 (S.C.C.), the Ontario Court of Appeal recently considered the interplay between the rescission of a domestic contract, and the availability of declaratory relief as to a contract's non-existence. The distinction was important because of the differing limitation periods: An application for a declaration is not subject to any limitation period, provided there is no consequential relief being sought. On the facts in *Kyle*, the husband had asked for rescission of his marriage contract with the wife, the terms of which precluded him from claiming spousal support or equalization of family property. He then proceeded to ask the court for new orders granting this type of relief at this stage. The wife countered by asserting application was time-barred by the *Limitations Act*, 2002, S.O. 2002, c. 24, Sch. B. The Court of Appeal disagreed. It scrutinized the essential nature of the husband's application, which – despite touching upon related disputes over spousal support and equalization – was at its core a simple request for a declaration that the parties' marriage contract was invalid. With that in mind, the husband's declaration application was not subject to any limitation period, unlike his claims for further remedial relief.
- In *Johnston v. Goodwin*, 2024 BCSC 1384 (B.C. S.C.), the same-sex parties, G and J, commenced their relationship in 2013. G won \$12 million in online slot game in 2016, after which point they signed a cohabitation

agreement. The recital to that agreement expressed their intent to maintain a “separate property” framework outside the ambit of the B.C. *Family Law Act*. The recital specifically defined “Shared Property” to mean assets registered in both of their names or designated in writing as being owned by them both. It also contained an entire agreement clause. After the couple separated, J, whose job involved providing investment advice to high net-worth clients, claimed the existence of a separate oral Fee Agreement with G, entitling him to 50 percent of G’s investment returns, in exchange for J’s advice and management. G denied existence of any oral Fee Agreement. He also pointed to the cohabitation agreement, which he said precluded any such claims by J. The court agreed that J’s civil claims under the purported agreement could proceed, since the cohabitation agreement focused on governing the parties’ relationship in view of *Family Law Act*, not on any business or investment arrangements they may have had. The subject-matter of the cohabitation agreement was limited to parties’ financial interdependence upon relationship breakdown, not on precluding the existence of separate business contracts between them. There was a genuine issue for trial on whether J was entitled to share in the investment returns reaped by G, under the alleged oral Fee Agreement.

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