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DOMESTIC CONTRACTS, 2ND ED.
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Release No. 1, April 2024

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) and Chapter 2 (Marriage Agreements)

Highlights

- In *El Rassi-Wight v. Arnold*, 2024 ONCA 2, 2024 CarswellOnt 30, [2024] O.J. No. 52 (Ont. C.A.) the Court of Appeal confirmed that an unwitnessed document was not tantamount to a valid domestic contract between former partners, even though the woman had video evidence that the man had initialled it. In doing so, the Court considered the formal requirements for creating domestic contracts as set out in s. 55(1) of the Family Law Act, together with the established test set out in *Gallacher v. Friesen*, 2014 ONCA 399, 2014 CarswellOnt 6424 (Ont. C.A.), and the principles set out recently by the Supreme Court of Canada decision in *Anderson v. Anderson* (2023), 2023 SCC 13 (S.C.C.). The Appeal Court confirmed the lower court's finding that, in these particular circumstances, there had been no compliance with s. 55(1). Moreover, the impugned contract's potential validity was hampered by the fact it had vague and imprecise terms, and by the fact that neither party had received independent legal advice. It was accordingly invalid, and unenforceable.
- In *M.M. v. B.M.*, 2023 MBKB 9, 2023 CarswellMan 8 (Man. K.B.), the issue was whether a valid separation agreement between the spouses, or merely an "agreement to agree", which is unenforceable in law. The court noted the wording contained what it called an "unfortunate reference" to their entering into a further agreement. Nonetheless, it was satisfied the parties had reached a binding agreement, after looking at all the facts from the standpoint of an objective reasonable bystander.
- In *P. v. Le*, 2023 ONSC 4653, 2023 CarswellOnt 12621, 2023 A.C.W.S. 4050 (Ont. S.C.J.), the mother challenged the validity the alleged agreement reached with the father, on the basis that she had not actually signed the Minutes of Settlement. The court rejected this argument as unreasonable on the facts, noting that her lawyer had full authority to negotiate on her behalf, and had sent a "final" draft as an offer to father, which he accepted.
- In Fernicola v. Fernicola, 2022 ONSC 1041, 2022 CarswellOnt 2320, 2022 A.C.W.S. 251 (Ont. S.C.J.) the court ruled that, despite a breakdown in communication between the parties, the subsequent exchange of correspondence between their respective lawyers constituted an offer and acceptance of the essential terms of the agreement.

ProView Developments

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