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FAMILY PROPERTY LAW AND PRACTICE IN CANADA

**Wilton & Joseph
Release No. 3, May 2025**

This unique work delivers both a thorough introduction to matrimonial property law and a detailed examination of the specific issues arising in every province which practitioners must be familiar with. This resource discusses: unequal divisions of property, excluded property, the valuation of the various kinds of property including pensions and the specific legislation and case law pertinent to each jurisdiction.

What's New in this Update:

This release features the continuation of updates to Chapter 8 (Ontario) and Chapter 8-S (Ontario).

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Highlights

In this release ss. 24 to 26 of the Ontario *Family Law Act* have been updated. Revised sections include severance of joint tenancy as between spouses and fraudulent conveyances.

Also included in this update are commentary and case law on the three types of domestic contracts – marriage contracts (s. 52), cohabitation agreements (s. 53) and separation agreements (s. 54). Commentary and case law on the formal requirements of domestic contracts (s. 55) has also undergone a thorough rewrite and update.

Notable cases include:

- **SCC**—The release analyzes the impact of the 2023 Supreme Court of Canada case *Anderson v. Anderson*, 2023 SCC 13, 2023 CarswellSask 225, 2023 CarswellSask 224 (S.C.C.), reversing 2021 SKCA 117, 2021 CarswellSask 513 (Sask. C.A.), reversing 2019 SKQB 35, 2019 CarswellSask 72 (Sask. Q.B.). Generally, the Anderson decision stands for the principle that domestic contracts should be encouraged and supported by courts, within the bounds permitted by the legislature, absent a compelling reason to discount the agreement. *Anderson* was decided under ss. 38 and 40 of the *Saskatchewan Family Property Act*. However, in Ontario there is conflicting case law as to whether a domestic agreement is valid under s. 55 if it hasn't been signed and/or witnessed. See, for example, *McPherson v. McPherson*, 2023 ONSC 5643, 2023 CarswellOnt 15344 (Ont. S.C.J.) (the agreement was not witnessed, but was found to be unenforceable); *Janes v. Janes*, 2023 ONSC 4953, 2023 CarswellOnt 13949 (Ont. S.C.J.) (an agreement need not be signed by both parties in order to be enforced; and *Zunnurain v. Chowdhury*, 2024 CarswellOnt 15688, 2024 ONSC 5552 (Ont. S.C.J.) (where the separation agreement was not signed by either party, it was unenforceable).
- **s. 26**—Section 26(1) was applicable where the deceased wife owned the matrimonial home as joint tenants with her mother at the time of her death: *Koutsovasilis v. Carreira*, 2024 CarswellOnt 13372, 2024 ONSC 4736 (Ont. S.C.J.), additional reasons 2024 CarswellOnt 19622, 2024 ONSC 6966 (Ont. S.C.J.). Application of s. 26(1) of the *Family Law Act* is not reliant on whether a spouse makes an election pursuant to s. 6(1) of the Act.
- **s. 26**—Where the severance of joint tenancy, “by an act of any one of the persons interested operating on his or her own share” was executed, and the transfer deed was registered two years prior to the common law husband's death, the registration was sufficient to sever the joint tenancy: *Peraziana v. Savage*, 2024 CarswellOnt 5, 2024 ONSC 217 (Ont. S.C.J.).
- **s. 52**—A German agreement was unenforceable as Ontario law does not permit parties to agree to decision-making responsibility with respect to their children in a marriage or cohabitation agreements. See *Al-Hadad v. Al-Harash*, 2023 ONCJ 463, 2023 CarswellOnt 15983 (Ont. C.J.).
- **s. 53**—The woman could not rely on unfairness that was prefaced on adhering to the terms of the cohabitation agreement, which at the same

time, she attacked as invalid. See *Dhir v. Malaviya*, 2023 ONSC 4958, 2023 CarswellOnt 13687 (Ont. Div. Ct.), affirming 2022 ONSC 4756, 2022 CarswellOnt 11595 (Ont. S.C.J.).

- **s. 54**—Where the parties were unaware that CRA liens were placed on the matrimonial home, the liens did not change the parties' intentions to enter a final separation agreement that included the transfer of the home to the wife for a payment of \$50,000. See *Walker v. Holman*, 2024 CarswellOnt 15586, 2024 ONSC 5635 (Ont. S.C.J.).
- **s. 55**—Video recording of the husband stating he signed the document did not serve as a complete substitute for the document having been properly witnessed. See *El Rassi-Wight v. Arnold*, 2024 ONCA 2, 2024 CarswellOnt 30 (Ont. C.A.).
- **s. 55**—An exchange of correspondence between counsel pre-litigation does not constitute a domestic contract under s. 55(1) of the Ontario *Family Law Act*. See *Greve v. Shaw*, 2022 ONSC 2598, 2022 CarswellOnt 5772 (Ont. S.C.J.).

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