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### ONTARIO FAMILY LAW ACT: LAW AND PRACTICE

MacDonald & Weiler  
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This is the definitive guide to both the substantive law and practice under Ontario's *Family Law Act*. Far more than just a collection of case summaries, this service offers detailed analysis of both statute and case law alike and tackles the difficult problems head-on.

This release features updates to Chapter 2 Definitions and Chapter 4 Co-habitation Agreements.

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## Highlights

- **Cohabitation Law in Ontario — Definitions — “Spouse” for the Purposes of Spousal Support — Subjective Versus Objective Test** — The parties’ 17 1/2 year relationship was characterized as a common-law marriage entitling the woman to support. The parties’ relationship was subject to an agreement which the man’s family characterized as a service agreement under which the woman was to care for the man. It was properly characterized as a cohabitation agreement under which the woman provided a full range of conjugal services. It was also established that the funds advanced to the woman were not wages, but rather spending money or an allowance to assist her in meeting her expenses. The fact that the parties maintain separate residences does not preclude a finding of cohabitation. The court held that it was not a prerequisite that the parties live together all the time or that the man stay the night in the woman’s apartment. The court found that ultimately the man thought he could avoid financial responsibility by maintaining a separate apartment. The evidence was clear that he was there almost every day well into the evening and that they otherwise continued to act as spouses in every other way. The court also found that while the woman provided services to the man, they were the full range of conjugal services and the man also provided services to her, driving her to work and to various appointments. The woman’s testimony and that of her friends and family made it clear that the parties engaged in the behaviour of a couple. They socialized with family and friends as a couple and that everyone believed they were a couple and were engaged to be married. At the time of drafting the employment agreement which the court found to be a cohabitation agreement, the woman considered herself to be the man’s spouse and that he allowed her to continue to believe it. She was awarded support of \$1,100 per month. *Campbell v. Szoke*, 2003 CarswellOnt 3362, 45 R.F.L. (5th) 261 (Ont. S.C.J.) at para. 52, affirmed 2005 CarswellOnt 186, 12 R.F.L. (6th) 263 (Ont. C.A.).
- **Cohabitation Law in Ontario — Cohabitation Agreements — Definition — Ownership in or Division of Property** — The court concluded the Quebec instruments signed by the parties that dealt with ownership of property did not oust the equalization provisions under Part I of the *Family Law Act* where it had no clear renunciation of their property rights and what was to happen upon breakdown of the marriage. The parties executed Quebec instruments that were found to be Domestic Contracts under the Ontario *Family Law Act*. It was agreed that the effect of the Quebec instruments would be that the parties would not be subject to Family Patrimony in Quebec. They would remain separate as to property, which meant all assets registered in the husband’s name would remain his sole property and all assets registered under the wife’s name would remain her sole property. There would be no transfer of ownership of property or value of other the party’s property. The court determined that the Quebec instruments did not contain direct and cogent language to oust the equalization scheme under the FLA. There was a high threshold that must be met before finding that an out of jurisdiction marriage contract prevailed over the

provisions of the Act. There were no waivers or release waivers in the instruments. The mere statement that the parties were “separate as to property” was not enough. There was no clear language as to what happened on marriage breakdown and a clear renunciation of their property rights upon marriage breakdowns. More importantly, the instruments do not expressly address substantive rights to equalize property upon the dissolution of marriage as required. The instruments therefore do not bar the wife from making an equalization claim under the FLA. *Torgersrud v. Lightstone*, 2022 ONSC 7084, 2022 CarswellOnt 18153 (Ont. S.C.J.), additional reasons 2023 ONSC 1603, 2023 CarswellOnt 3074 (Ont. S.C.J.), affirmed 2023 ONCA 580, 2023 CarswellOnt 13677 (Ont. C.A.).

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