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ONTARIO FAMILY LAW ACT: LAW AND PRACTICE

**MacDonald & Weiler
Release No. 10, December 2024**

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 updates case law related to domestic contracts including property division and support obligations; conditions justifying setting the contract aside; formal requirements; enforceability and releases against a spouse's estate.

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Highlights

This release updates case law for ss. 56(1) and 56(4) of the *Family Law Act*. Notable cases include:

- **Section 56(1)**—An agreement will not be set aside where the one party fails to make a valid best interests argument rooted in any evidence that might engage the provision. See *Issa v. Haidar*, 2024 ONSC 4629, 2024 CarswellOnt 12479 (Ont. S.C.J.), additional reasons 2024 ONSC 5998, 2024 CarswellOnt 16743 (Ont. S.C.J.).
- **Section 56(4)**—Where a party does not understand basic terms, in this case the concept of “equity” as it related to the parties’ house, a sufficient basis will exist to set aside the contract under s. 56(4)(b). See *El Rassi-Wight v. Arnold*, 2024 ONCA 2, 2024 CarswellOnt 30 (Ont. C.A.).
- **Section 56(4)**—Where the parties remained living in the same home six years after entering a separation agreement, but the evidence did not support the husband’s contention they had reconciled during this period, both the transfer of property in favour of the wife and mutual waiver of spousal support were valid. See *Ilaslan v. Poirier*, 2024 ONSC 61, 2024 CarswellOnt 699 (Ont. S.C.J.), additional reasons 2024 ONSC 1557, 2024 CarswellOnt 3617 (Ont. S.C.J.).
- **Section 56(4)**—While the court found the husband did not understand one provision in the separation agreement, this did not invalidate the entire contract. In light of the severability clause, the provision at issue was found to be of no force and effect. See *Albaum v. Albaum*, 2024 ONSC 1595, 2024 CarswellOnt 4423 (Ont. S.C.J.).
- **Section 56(4)**—A claim of mental illness alone, without supporting evidence of impaired cognitive function, is not sufficient to set aside a domestic agreement on the basis of failing to understand the nature of the agreement or its consequences. See *Rose v. Rose*, 2023 ONSC 1833, 2023 CarswellOnt 4080 (Ont. S.C.J.).
- **Section 56(4)**—While an agreement may specifically state that a party was not under duress or undue influence when she or he signed the agreement, such a statement is not conclusive evidence that she or he was not under duress: such a statement is a factor to consider but certainly not determinative of the issue. See *Malaviya v. Dhir*, 2023 ONSC 1993, 2023 CarswellOnt 4217 (Ont. S.C.J.).
- **Section 56(4)**—The husband’s failure to notify the wife of an impending large investment for his company was significant enough for the wife to meet the first requirement of s. 56(4) of the *Family Law Act*. See *Tsarynny v. Topchiy*, 2023 ONSC 6157, 2023 CarswellOnt 18425 (Ont. S.C.J.).

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