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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 includes new commentary and case law on the determination of a couple's date of separation or "valuation date" when the parties themselves cannot agree.

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Highlights

Notable cases include:

“[W]hen it comes to the timing of spousal separation, the element of change should be emphasized” (emphasis in original). See *Kassabian v. Marcarian*, 2025 ONCA 239, 2025 CarswellOnt 4365 (Ont. C.A.), affirming *K.N.K. v. B.M.*, 2024 ONSC 2719, 2024 CarswellOnt 7495 (Ont. S.C.J.). The Court of Appeal offered a consolidated list of factors to consider in determining the date of separation or valuation:

- a. Nature of the relationship
- b. Financial arrangements
- c. Interaction with third parties
- d. Formal steps taken to end the marriage or relationship
- e. Any steps taken to resume cohabitation

This release also updates cases as to the election required under s. 6 of the Act after the death of a spouse; s. 7(1) applications to court; and s. 7(3) limitation periods; and the s. 8 requirement to provide a statement of property.

Section 6

The “valuation date” in the case of a spouse’s death is clearly defined in the *Family Law Act* in s. 4(1) as the day before the spouse’s death and there is no provision in the Act that permits a court to deviate from that date for the purpose of valuating net family property. See *Leith v. Leith Estate*, 2024 ONCA 863, 2024 CarswellOnt 18375 (Ont. C.A.).

The extension was granted where the husband relied on the consent throughout litigation to defer his decision as to whether to make an election until 60 days after the granting of the certificate of estate trustee. See *Castiglione v. Akram*, 2024 ONSC 7408, 2024 CarswellOnt 13644 (Ont. S.C.J.).

The husband could elect to receive an equalization payment whether or not the will was valid: if it was not valid, the wife would be deemed to have died intestate, and the husband would also have the option of seeking a preferential share of \$200,000 from her estate. See *Castiglione v. Akram*, 2024 ONSC 7408, 2024 CarswellOnt 13644 (Ont. S.C.J.).

Subsection 7(1)

It is open to the court to consider the issue of equalization and order an equalization payment in favour of the husband in the absence of a claim by the husband where the wife had initially raised the issue. See *Cohen v. Cohen*, 2024 ONCA 114, 2024 CarswellOnt 1839 (Ont. C.A.).

Subsection 7(3)

The two-year limitation period in s. 7(3)(a) of the *Family Law Act* applies only to an application based on s. 5(1) or (2), and not to the determination of a question of ownership between spouses set out in s. 10(1) of the Act. See *Bakhsh v. Merdad*, 2022 ONCA 130, 2022 CarswellOnt 1881 (Ont. C.A.).

Section 8

The court declined to order an equalization payment owing by either party to the other where there was no evidence disclosed as required pursuant to s. 8 of the *Family Law Act*. See *Del Grosso v. Del Grosso*, 2025 ONSC 2030, 2025 CarswellOnt 4889 (Ont. S.C.J.).

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