

Publisher's Note

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MacDonald & Partners LLP

Handling a Family Law Matter in Ontario

Introduction

This publication is an all-in-one practical guide that enables the lawyer or law clerk to handle a family law matter in Ontario. The work is a comprehensive guide organized in the order a family law lawyer may confront the issues in a typical family law file. Each chapter begins with a discussion of the law, procedure and the issues that may arise. This discussion is meant to give a practical background in the subject with tips for the practitioner. The discussion is then followed with checklists, precedents and forms — the practical tools to enable the lawyer or law clerk to do his or her job.

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What's New

This release includes updates to the Significant Case Law Commentary and Selected Legal Literature section. Also included in this release is a new section “Significant Rule Changes”.

Highlights

- **Significant Case Law Commentary — Family Lawyers and Contingency Fees** — In *Jackson v. Stephen Durbin and Associates*, 2018 ONCA 424, Benotto J.A. warned family lawyers against charging their clients premiums for positive results. “Results Achieved Fees” were deemed prohibited contingency fees described in section 28.1(3)(b) of the *Solicitor’s Act*, R.S.O. 1990, c. S. 15 (“Solicitor’s Act”).
- **Significant Case Law Commentary — Equalization: Dividing a Pension Using Monthly Payments** — Trotter J.A. discussed the division of a Canadian Forces Pension as family property in *Fawcett v. Fawcett*, 2018 ONCA 150. The pension was “in pay,” and the appellant wanted to have her pension divided at the source, meaning her former husband would receive his portion of the equalization payment on a monthly basis. She further argued that subsection 10.1(5) of the *Family Law Act*, R.S.O. 1990, c. F.3 (the “FLA”) precludes a lump-sum transfer of a pension that has matured. The Ontario Court of Appeal dismissed her request, following a detailed statutory interpretation analysis.
- **Significant Rule Changes — Electronic Filing** — Pursuant to Rule 1.1 parties are now able to file joint applications for divorce electronically. This also affects Rule 6(1) regarding service, as the rule now allows for electronic filing and service of joint divorce applications. Rule 36(6) is also affected by this, as the draft divorce order required by this rule may now be submitted electronically.
- **Selected Legal Literature section — The Court’s Jurisdiction to Change an Order: The Doctrine of *Functus Officio*, Rule 25(19), and Re-Opening Cases — The Doctrine of *Functus Officio*** — When a court is deemed *functus officio*, a judgment has been entered; the judge does not have the jurisdiction to alter it. However, before the judgment is finalized, a court does possess broad discretion to change their order.