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ONTARIO FAMILY LAW ACT: LAW AND PRACTICE

**MacDonald & Weiler
Release No. 5, June 2022**

Publisher's Special Release Note 2021

The pages in this work were reissued in October 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the October 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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.

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This release features updates to Chapter 4: Cohabitation Agreements.

Highlights

- **Cohabitation Agreements — Setting Aside Domestic Contracts (s. 56(4) of the *Family Law Act*) — General — Failure to Understand the Nature or Consequences of the Domestic Contract (s. 56(4)(b)) — Domestic Contracts — Cases** — The applicant claimed that she was in such an emotional state that she did not understand the agreement. The court found her claim was not supported by evidence. She testified that she did not read the agreement, but she did have a Certificate of Independent Legal Advice which was signed to indicate that she did receive advice. The applicant agreed that she did not feel the lawyer was at any fault and he was a good lawyer. The agreement was negotiated over three months. The added suggestions all came from the applicant's lawyer, and they were accepted by the respondent. A separate witness testified that she had numerous discussions with the applicant about the separation agreement. This was inconsistent with the applicant's claim that she did not read or understand the agreement: *Smith v. Secord*, 2021 ONSC 4461, 2021 CarswellOnt 10388 (Ont. S.C.J.), additional reasons 2022 ONSC 177, 2022 CarswellOnt 46 (Ont. S.C.J.).
- **Cohabitation Agreements — Setting Aside Domestic Contracts (s. 56(4) of the *Family Law Act*) — General — Failure to Understand the Nature or Consequences of the Domestic Contract (s. 56(4)(b)) — Domestic Contracts — Cases** — The husband argued that both he and his lawyer had misunderstood the marriage contract. He stated that he was led to believe that he would be entitled to half the increase of the value of the home once they had been married for five years. The marriage contract stated the husband would be entitled to that share in the event the wife died. There was no evidence that the husband's lawyer shared this mistaken belief. The husband also did not request half the proceeds from the sale of the home, which was inconsistent with his claim that he believed he was entitled to it: *Gorman v. Sadjja*, 2020 ONSC 6192, 2020 CarswellOnt 14847 (Ont. S.C.J.), affirmed 2021 ONCA 430, 2021 CarswellOnt 8654 (Ont. C.A.).

ProView Developments

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