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The Ontario Family Law Act

Part IV

Domestic Contracts

Definitions

51. In this Part,

“cohabitation agreement” means an agreement entered into under section 53;

“domestic contract” means a marriage contract, separation agreement, cohabitation agreement, paternity agreement or family arbitration agreement;

“marriage contract” means an agreement entered into under section 52;

“paternity agreement” means an agreement entered into under section 59;

“separation agreement” means an agreement entered into under section 54.

Marriage contracts

52. (1) Two persons who are married to each other or intend to marry may enter into an agreement in which they agree on their respective rights and obligations under the marriage or on separation, on the annulment or dissolution of the marriage or on death, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
- (d) any other matter in the settlement of their affairs.

Rights re matrimonial home excepted

(2) A provision in a marriage contract purporting to limit a spouse’s rights under Part II (Matrimonial Home) is unenforceable.

Cohabitation agreements

53. (1) Two persons who are cohabiting or intend to cohabit and who are not married to each other may enter into an agreement in which they agree on their respective rights and obligations during cohabitation, or on ceasing to cohabit or on death, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children, but not the right to custody of or access to their children; and
- (d) any other matter in the settlement of their affairs.

Effect of marriage on agreement

(2) If the parties to a cohabitation agreement marry each other, the agreement shall be deemed to be a marriage contract.

Separation agreements

54. Two persons who cohabited and are living separate and apart may enter into an agreement in which they agree on their respective rights and obligations, including,

- (a) ownership in or division of property;
- (b) support obligations;
- (c) the right to direct the education and moral training of their children;
- (d) the right to custody of and access to their children; and
- (e) any other matter in the settlement of their affairs.

Form and capacity

Form of contract

55. (1) A domestic contract and an agreement to amend or rescind a domestic contract are unenforceable unless made in writing, signed by the parties and witnessed.

Capacity of minor

(2) A minor has capacity to enter into a domestic contract, subject to the approval of the court, which may be given before or after the minor enters into the contract.

Guardian of property

(3) If a mentally incapable person has a guardian of property other than his or her own spouse, the guardian may enter into a domestic contract or give any waiver or consent under this Act on the person's behalf, subject to the approval of the court, given in advance.

(4) In all other cases of mental incapacity, the Public Guardian and Trustee has power to act on the person's behalf in accordance with subsection (3).

Provisions that may be set aside or disregarded

Contracts subject to best interests of child

56. (1) In the determination of a matter respecting the education, moral training or custody of or access to a child, the court may disregard any provision of a domestic contract pertaining to the matter where, in the opinion of the court, to do so is in the best interests of the child.

Contracts subject to child support guidelines

(1.1) In the determination of a matter respecting the support of a child, the court may disregard any provision of a domestic contract or paternity agreement pertaining to the matter where the provision is unreasonable having regard to the child support guidelines, as well as to any other provision relating to support of the child in the contract or agreement.

(2) A provision in a domestic contract to take effect on separation whereby any right of a party is dependent upon remaining chaste is unenforceable, but this subsection shall not be construed to affect a contingency upon marriage or cohabitation with another.

Idem

(3) A provision in a domestic contract made before the 1st day of March, 1986 whereby any right of a party is dependent upon remaining chaste shall be given effect as a contingency upon marriage or cohabitation with another

Setting aside domestic contract.

(4) A court may, on application, set aside a domestic contract or a provision in it,

(a) if a party failed to disclose to the other significant assets, or significant debts or other liabilities, existing when the domestic contract was made;

(b) if a party did not understand the nature or consequences of the domestic contract; or

(c) otherwise in accordance with the law of contract.

Barriers to remarriage

(5) The court may, on application, set aside all or part of a separation agreement or settlement, if the court is satisfied that the removal by one spouse of barriers that would prevent the other spouse's remarriage within that spouse's faith was a consideration in the making of the agreement or settlement.

Idem

(6) Subsection (5) also applies to consent orders, releases, notices of discontinuance and abandonment and other written or oral arrangements

Application of subss. (4, 5, 6)

(7) Subsections (4), (5) and (6) apply despite any agreement to the contrary

Rights of donors of gifts

57. If a domestic contract provides that specific gifts made to one or both parties may not be disposed of or encumbered without the consent of the donor, the donor shall be deemed to be a party to the contract for the purpose of enforcement or amendment of the provision.

Contracts made outside Ontario

58. The manner and formalities of making a domestic contract and its essential validity and effect are governed by the proper law of the contract, except that,

(a) a contract of which the proper law is that of a jurisdiction other than Ontario is also valid and enforceable in Ontario if entered into in accordance with Ontario's internal law;

(b) subsection 33 (4) (setting aside provision for support or waiver) and section 56 apply in Ontario to contracts for which the proper law is that of a jurisdiction other than Ontario; and

(c) a provision in a marriage contract or cohabitation agreement respecting the right to custody of or access to children is not enforceable in Ontario.

Paternity agreements

59. (1) If a man and a woman who are not spouses enter into an agreement for,

(a) the payment of the expenses of a child's prenatal care and birth;

(b) support of a child; or

(c) funeral expenses of the child or mother, on the application of a party, or a children's aid society, to the Ontario Court (Provincial Division) or the Unified Family Court, the court may incorporate the agreement in an order, and Part III (Support Obligations) applies to the order in the same manner as if it were an order made under that Part.

Child support guidelines

(1.1) A court shall not incorporate an agreement for the support of a child in an order under subsection (1) unless the court is satisfied that the agreement is reasonable having regard to the child support guidelines, as well as to any other provision relating to support of the child in the agreement.

Absconding respondent

(2) If an application is made under subsection (1) and a judge of the court is satisfied that the respondent is about to leave Ontario and that there are reasonable grounds to believe that the respondent intends to evade his or her responsibilities under the agreement, the judge may issue a warrant in the form prescribed by the rules of the court for the respondent's arrest.

Bail

(3) Section 150 (interim release by justice of the peace) of the Provincial Offences Act applies with necessary modifications to an arrest under the warrant.

Capacity of minor

(4) A minor has capacity to enter into an agreement under subsection (1) that is approved by the court, whether the approval is given before or after the minor enters into the agreement.

Application to existing agreements

(5) This section applies to paternity agreements that were made before the 1st day of March, 1986.

Application of Act to existing contracts

60. (1) A domestic contract validly made before the 1st day of March, 1986 shall be deemed to be a domestic contract for the purposes of this Act.

Contracts entered into before the 1st day of March, 1986

(2) If a domestic contract was entered into before the 1st day of March, 1986 and the contract or any part would have been valid if entered into on or after that day, the contract or part is not invalid for the reason only that it was entered into before that day.

Idem

(3) If property is transferred, under an agreement or understanding reached before the 31st day of March, 1978, between spouses who are living separate and apart, the transfer is effective as if made under a domestic contract.

