

Family Law Act

R.S.O. 1990, CHAPTER F.3

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Preamble

Whereas it is desirable to encourage and strengthen the role of the family; and whereas for that purpose it is necessary to recognize the equal position of spouses as individuals within marriage and to recognize marriage as a form of partnership; and whereas in support of such recognition it is necessary to provide in law for the orderly and equitable settlement of the affairs of the spouses upon the breakdown of the partnership, and to provide for other mutual obligations in family relationships, including the equitable sharing by parents of responsibility for their children;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. (1) In this Act,

“child” includes a person whom a parent has demonstrated a settled intention to treat as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody; (“enfant”)

“child support guidelines” means the guidelines established by the regulations made under subsections 69 (2) and (3); (“lignes directrices sur les aliments pour les enfants”)

“cohabit” means to live together in a conjugal relationship, whether within or outside marriage; (“cohabiter”)

“court” means the Ontario Court of Justice, the Family Court of the Superior Court of Justice or the Superior Court of Justice; (“tribunal”)

“domestic contract” means a domestic contract as defined in Part IV (Domestic Contracts); (“contrat familial”)

“parent” includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody; (“père ou mère”)

“paternity agreement” means a paternity agreement as defined in Part IV (Domestic Contracts); (“accord de paternité”)

“spouse” means either of two persons who,

- (a) are married to each other, or
- (b) have together entered into a marriage that is voidable or void, in good faith on the part of a person relying on this clause to assert any right. (“conjoint”) R.S.O. 1990, c. F.3, s. 1 (1); 1997, c. 20, s. 1; 1999, c. 6, s. 25 (1); 2005, c. 5, s. 27 (1, 2); 2006, c. 19, Sched. C, s. 1 (1, 2, 4).

Polygamous marriages

(2) In the definition of “spouse”, a reference to marriage includes a marriage that is actually or potentially polygamous, if it was celebrated in a jurisdiction whose system of law recognizes it as valid. R.S.O. 1990, c. F.3, s. 1 (2).

Procedural and other miscellaneous matters

Staying application

2. (1) If, in an application under this Act, it appears to the court that for the appropriate determination of the spouses’ affairs it is necessary or desirable to have other matters determined first or simultaneously, the court may stay the application until another proceeding is brought or determined as the court considers appropriate. R.S.O. 1990, c. F.3, s. 2 (1).

All proceedings in one court

(2) Except as this Act provides otherwise, no person who is a party to an application under this Act shall make another application under this Act to another court, but the court may order that the proceeding be transferred to a court having other jurisdiction where, in the first court’s opinion, the other court is more appropriate to determine the matters in issue that should be determined at the same time. R.S.O. 1990, c. F.3, s. 2 (2).

Applications in Superior Court of Justice

(3) In the Superior Court of Justice, an application under this Act may be made by action or application. R.S.O. 1990, c. F.3, s. 2 (3); 2006, c. 19, Sched. C, s. 1 (1).

Statement re removal of barriers to remarriage

(4) A party to an application under section 7 (net family property), 10 (questions of title between spouses), 33 (support), 34 (powers of court) or 37 (variation) may serve on the other party and file with the court a statement, verified by oath or statutory declaration, indicating that,

- (a) the author of the statement has removed all barriers that are within his or her control and that would prevent the other spouse’s remarriage within that spouse’s faith; and
- (b) the other party has not done so, despite a request. R.S.O. 1990, c. F.3, s. 2 (4).

Idem

(5) Within ten days after service of the statement, or within such longer period as the court allows, the party served with a statement under subsection (4) shall serve on the other party and file with the court a statement, verified by oath or statutory declaration, indicating that the author of the statement has removed all barriers that are within his or her control and that would prevent the other spouse's remarriage within that spouse's faith. R.S.O. 1990, c. F.3, s. 2 (5).

Dismissal, etc.

(6) When a party fails to comply with subsection (5),

(a) if the party is an applicant, the proceeding may be dismissed;

(b) if the party is a respondent, the defence may be struck out. R.S.O. 1990, c. F.3, s. 2 (6).

Exception

(7) Subsections (5) and (6) do not apply to a party who does not claim costs or other relief in the proceeding. R.S.O. 1990, c. F.3, s. 2 (7).

Extension of times

(8) The court may, on motion, extend a time prescribed by this Act if it is satisfied that,

(a) there are apparent grounds for relief;

(b) relief is unavailable because of delay that has been incurred in good faith; and

(c) no person will suffer substantial prejudice by reason of the delay. R.S.O. 1990, c. F.3, s. 2 (8).

Incorporation of contract in order

(9) A provision of a domestic contract in respect of a matter that is dealt with in this Act may be incorporated in an order made under this Act. R.S.O. 1990, c. F.3, s. 2 (9).

Act subject to contracts

(10) A domestic contract dealing with a matter that is also dealt with in this Act prevails unless this Act provides otherwise. R.S.O. 1990, c. F.3, s. 2 (10).

Registration of orders

(11) An order made under this Act that affects real property does not affect the acquisition of an interest in the real property by a person acting in good faith without notice of the order, unless the order is registered in the proper land registry office. R.S.O. 1990, c. F.3, s. 2 (11).

Mediation

3. (1) In an application under this Act, the court may, on motion, appoint a person whom the parties have selected to mediate any matter that the court specifies. R.S.O. 1990, c. F.3, s. 3 (1).

Consent to act

(2) The court shall appoint only a person who,

(a) has consented to act as mediator; and

(b) has agreed to file a report with the court within the period of time specified by the court. R.S.O. 1990, c. F.3, s. 3 (2).

Duty of mediator

(3) The mediator shall confer with the parties, and with the children if the mediator considers it appropriate to do so, and shall endeavour to obtain an agreement between the parties. R.S.O. 1990, c. F.3, s. 3 (3).

Full or limited report

(4) Before entering into mediation, the parties shall decide whether,

(a) the mediator is to file a full report on the mediation, including anything that he or she considers relevant; or

(b) the mediator is to file a limited report that sets out only the agreement reached by the parties or states only that the parties did not reach agreement. R.S.O. 1990, c. F.3, s. 3 (4).

Filing and copies of report

(5) The mediator shall file with the clerk or registrar of the court a full or limited report, as the parties have decided, and shall give a copy to each of the parties. R.S.O. 1990, c. F.3, s. 3 (5).

Admissions, etc., in the course of mediation

(6) If the parties have decided that the mediator is to file a limited report, no evidence of anything said or of any admission or communication made in the course of the mediation is admissible in any proceeding, except with the consent of all parties to the proceeding in which the mediator was appointed. R.S.O. 1990, c. F.3, s. 3 (6).

Fees and expenses

(7) The court shall require the parties to pay the mediator's fees and expenses and shall specify in the order the proportions or amounts of the fees and expenses that each party is required to pay. R.S.O. 1990, c. F.3, s. 3 (7).

Idem, serious financial hardship

(8) The court may require one party to pay all the mediator's fees and expenses if the court is satisfied that payment would cause the other party or parties serious financial hardship. R.S.O. 1990, c. F.3, s. 3 (8).

PART I FAMILY PROPERTY

Definitions

4. (1) In this Part,

“court” means a court as defined in subsection 1 (1), but does not include the Ontario Court of Justice; (“tribunal”)

“matrimonial home” means a matrimonial home under section 18 and includes property that is a matrimonial home under that section at the valuation date; (“foyer conjugal”)

“net family property” means the value of all the property, except property described in subsection (2), that a spouse owns on the valuation date, after deducting,

- (a) the spouse's debts and other liabilities, and
- (b) the value of property, other than a matrimonial home, that the spouse owned on the date of the marriage, after deducting the spouse's debts and other liabilities, other than debts or liabilities related directly to the acquisition or significant improvement of a matrimonial home, calculated as of the date of the marriage; (“biens familiaux nets”)

“property” means any interest, present or future, vested or contingent, in real or personal property and includes,

- (a) property over which a spouse has, alone or in conjunction with another person, a power of appointment exercisable in favour of himself or herself,
- (b) property disposed of by a spouse but over which the spouse has, alone or in conjunction with another person, a power to revoke the disposition or a power to consume or dispose of the property, and
- (c) in the case of a spouse's rights under a pension plan that have vested, the spouse's interest in the plan including contributions made by other persons; (“bien”)

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (c) is repealed and the following substituted:

- (c) in the case of a spouse's rights under a pension plan, the imputed value, for family law purposes, of the spouse's interest in the plan, as determined in accordance with section 10.1, for the period beginning with the date of the marriage and ending on the valuation date; (“bien”)

See: 2009, c. 11, ss. 22 (4), 53 (2).

“valuation date” means the earliest of the following dates:

1. The date the spouses separate and there is no reasonable prospect that they will resume cohabitation.
2. The date a divorce is granted.
3. The date the marriage is declared a nullity.
4. The date one of the spouses commences an application based on subsection 5 (3) (improvident depletion) that is subsequently granted.
5. The date before the date on which one of the spouses dies leaving the other spouse surviving. (“date d'évaluation”)
R.S.O. 1990, c. F.3, s. 4 (1); 2006, c. 19, Sched. C, s. 1 (2); 2009, c. 11, s. 22 (1-3); 2009, c. 33, Sched. 2, s. 34 (1).

Net family property, liabilities

(1.1) The liabilities referred to in clauses (a) and (b) of the definition of “net family property” in subsection (1) include any applicable contingent tax liabilities in respect of the property. 2009, c. 33, Sched. 2, s. 34 (2).

Excluded property

(2) The value of the following property that a spouse owns on the valuation date does not form part of the spouse’s net family property:

1. Property, other than a matrimonial home, that was acquired by gift or inheritance from a third person after the date of the marriage.
2. Income from property referred to in paragraph 1, if the donor or testator has expressly stated that it is to be excluded from the spouse’s net family property.
3. Damages or a right to damages for personal injuries, nervous shock, mental distress or loss of guidance, care and companionship, or the part of a settlement that represents those damages.
4. Proceeds or a right to proceeds of a policy of life insurance, as defined under the *Insurance Act*, that are payable on the death of the life insured.
5. Property, other than a matrimonial home, into which property referred to in paragraphs 1 to 4 can be traced.
6. Property that the spouses have agreed by a domestic contract is not to be included in the spouse’s net family property.
7. Unadjusted pensionable earnings under the *Canada Pension Plan*. R.S.O. 1990, c. F.3, s. 4 (2); 2004, c. 31, Sched. 38, s. 2 (1); 2009, c. 11, s. 22 (5).

Onus of proof re deductions and exclusions

(3) The onus of proving a deduction under the definition of “net family property” or an exclusion under subsection (2) is on the person claiming it. R.S.O. 1990, c. F.3, s. 4 (3).

Close of business

(4) When this section requires that a value be calculated as of a given date, it shall be calculated as of close of business on that date. R.S.O. 1990, c. F.3, s. 4 (4).

Net family property not to be less than zero

(5) If a spouse’s net family property as calculated under subsections (1), (2) and (4) is less than zero, it shall be deemed to be equal to zero. R.S.O. 1990, c. F.3, s. 4 (5).

Equalization of net family properties

Divorce, etc.

5. (1) When a divorce is granted or a marriage is declared a nullity, or when the spouses are separated and there is no reasonable prospect that they will resume cohabitation, the spouse whose net family property is the lesser of the two net family properties is entitled to one-half the difference between them. R.S.O. 1990, c. F.3, s. 5 (1).

Death of spouse

(2) When a spouse dies, if the net family property of the deceased spouse exceeds the net family property of the surviving spouse, the surviving spouse is entitled to one-half the difference between them. R.S.O. 1990, c. F.3, s. 5 (2).

Improvident depletion of spouse’s net family property

(3) When spouses are cohabiting, if there is a serious danger that one spouse may improvidently deplete his or her net family property, the other spouse may on an application under section 7 have the difference between the net family properties divided as if the spouses were separated and there were no reasonable prospect that they would resume cohabitation. R.S.O. 1990, c. F.3, s. 5 (3).

No further division

(4) After the court has made an order for division based on subsection (3), neither spouse may make a further application under section 7 in respect of their marriage. R.S.O. 1990, c. F.3, s. 5 (4).

Idem

(5) Subsection (4) applies even though the spouses continue to cohabit, unless a domestic contract between the spouses provides otherwise. R.S.O. 1990, c. F.3, s. 5 (5).

Variation of share

(6) The court may award a spouse an amount that is more or less than half the difference between the net family properties if the court is of the opinion that equalizing the net family properties would be unconscionable, having regard to,

- (a) a spouse's failure to disclose to the other spouse debts or other liabilities existing at the date of the marriage;
 - (b) the fact that debts or other liabilities claimed in reduction of a spouse's net family property were incurred recklessly or in bad faith;
 - (c) the part of a spouse's net family property that consists of gifts made by the other spouse;
 - (d) a spouse's intentional or reckless depletion of his or her net family property;
 - (e) the fact that the amount a spouse would otherwise receive under subsection (1), (2) or (3) is disproportionately large in relation to a period of cohabitation that is less than five years;
 - (f) the fact that one spouse has incurred a disproportionately larger amount of debts or other liabilities than the other spouse for the support of the family;
 - (g) a written agreement between the spouses that is not a domestic contract; or
 - (h) any other circumstance relating to the acquisition, disposition, preservation, maintenance or improvement of property.
- R.S.O. 1990, c. F.3, s. 5 (6).

Purpose

(7) The purpose of this section is to recognize that child care, household management and financial provision are the joint responsibilities of the spouses and that inherent in the marital relationship there is equal contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities, entitling each spouse to the equalization of the net family properties, subject only to the equitable considerations set out in subsection (6). R.S.O. 1990, c. F.3, s. 5 (7).

Election

Spouse's will

6. (1) When a spouse dies leaving a will, the surviving spouse shall elect to take under the will or to receive the entitlement under section 5. R.S.O. 1990, c. F.3, s. 6 (1).

Spouse's intestacy

(2) When a spouse dies intestate, the surviving spouse shall elect to receive the entitlement under Part II of the *Succession Law Reform Act* or to receive the entitlement under section 5. R.S.O. 1990, c. F.3, s. 6 (2).

Spouse's partial intestacy

(3) When a spouse dies testate as to some property and intestate as to other property, the surviving spouse shall elect to take under the will and to receive the entitlement under Part II of the *Succession Law Reform Act*, or to receive the entitlement under section 5. R.S.O. 1990, c. F.3, s. 6 (3).

Property outside estate

(4) A surviving spouse who elects to take under the will or to receive the entitlement under Part II of the *Succession Law Reform Act*, or both in the case of a partial intestacy, shall also receive the other property to which he or she is entitled because of the first spouse's death. R.S.O. 1990, c. F.3, s. 6 (4).

Gifts by will

(5) The surviving spouse shall receive the gifts made to him or her in the deceased spouse's will in addition to the entitlement under section 5 if the will expressly provides for that result. R.S.O. 1990, c. F.3, s. 6 (5).

Amounts to be credited

(6) The rules in subsection (7) apply if a surviving spouse elects or has elected to receive an entitlement under section 5 and is,

- (a) the beneficiary of a policy of life insurance, as defined in the *Insurance Act*, that was taken out on the life of the deceased spouse and owned by the deceased spouse or was taken out on the lives of a group of which he or she was a member;
- (b) the beneficiary of a lump sum payment provided under a pension or similar plan on the death of the deceased spouse; or
- (c) the recipient of property or a portion of property to which the surviving spouse becomes entitled by right of survivorship or otherwise on the death of the deceased spouse. 2009, c. 11, s. 23.

Same

(7) The following rules apply in the circumstances described in subsection (6):

1. The amount of every payment and the value of every property or portion of property described in that subsection, less any contingent tax liability in respect of the payment, property or portion of property, shall be credited against the surviving spouse's entitlement under section 5.
2. If the total amount of the credit under paragraph 1 exceeds the entitlement under section 5, the deceased spouse's personal representative may recover the excess amount from the surviving spouse.
3. Paragraphs 1 and 2 do not apply in respect of a payment, property or portion of property if,
 - i. the deceased spouse provided in a written designation, will or other written instrument, as the case may be, that the surviving spouse shall receive the payment, property or portion of property in addition to the entitlement under section 5, or
 - ii. in the case of property or a portion of property referred to in clause (6) (c), if the surviving spouse's entitlement to the property or portion of property was established by or on behalf of a third person, either the deceased spouse or the third person provided in a will or other written instrument that the surviving spouse shall receive the property or portion of property in addition to the entitlement under section 5. 2009, c. 11, s. 23.

Effect of election to receive entitlement under s. 5

(8) When a surviving spouse elects to receive the entitlement under section 5, the gifts made to him or her in the deceased spouse's will are revoked and the will shall be interpreted as if the surviving spouse had died before the other, unless the will expressly provides that the gifts are in addition to the entitlement under section 5. R.S.O. 1990, c. F.3, s. 6 (8).

Idem

(9) When a surviving spouse elects to receive the entitlement under section 5, the spouse shall be deemed to have disclaimed the entitlement under Part II of the *Succession Law Reform Act*. R.S.O. 1990, c. F.3, s. 6 (9).

Manner of making election

(10) The surviving spouse's election shall be in the form prescribed by the regulations made under this Act and shall be filed in the office of the Estate Registrar for Ontario within six months after the first spouse's death. R.S.O. 1990, c. F.3, s. 6 (10).

Deemed election

(11) If the surviving spouse does not file the election within that time, he or she shall be deemed to have elected to take under the will or to receive the entitlement under the *Succession Law Reform Act*, or both, as the case may be, unless the court, on application, orders otherwise. R.S.O. 1990, c. F.3, s. 6 (11).

Priority of spouse's entitlement

(12) The spouse's entitlement under section 5 has priority over,

- (a) the gifts made in the deceased spouse's will, if any, subject to subsection (13);
- (b) a person's right to a share of the estate under Part II (Intestate Succession) of the *Succession Law Reform Act*;
- (c) an order made against the estate under Part V (Support of Dependents) of the *Succession Law Reform Act*, except an order in favour of a child of the deceased spouse. R.S.O. 1990, c. F.3, s. 6 (12).

Exception

(13) The spouse's entitlement under section 5 does not have priority over a gift by will made in accordance with a contract that the deceased spouse entered into in good faith and for valuable consideration, except to the extent that the value of the gift, in the court's opinion, exceeds the consideration. R.S.O. 1990, c. F.3, s. 6 (13).

Distribution within six months of death restricted

(14) No distribution shall be made in the administration of a deceased spouse's estate within six months of the spouse's death, unless,

- (a) the surviving spouse gives written consent to the distribution; or
- (b) the court authorizes the distribution. R.S.O. 1990, c. F.3, s. 6 (14).

Idem, notice of application

(15) No distribution shall be made in the administration of a deceased spouse's death after the personal representative has received notice of an application under this Part, unless,

- (a) the applicant gives written consent to the distribution; or
- (b) the court authorizes the distribution. R.S.O. 1990, c. F.3, s. 6 (15).

Extension of limitation period

(16) If the court extends the time for a spouse's application based on subsection 5 (2), any property of the deceased spouse that is distributed before the date of the order and without notice of the application shall not be brought into the calculation of the deceased spouse's net family property. R.S.O. 1990, c. F.3, s. 6 (16).

Exception

(17) Subsections (14) and (15) do not prohibit reasonable advances to dependants of the deceased spouse for their support. R.S.O. 1990, c. F.3, s. 6 (17).

Definition

(18) In subsection (17),

“dependant” has the same meaning as in Part V of the *Succession Law Reform Act*. R.S.O. 1990, c. F.3, s. 6 (18).

Liability of personal representative

(19) If the personal representative makes a distribution that contravenes subsection (14) or (15), the court makes an order against the estate under this Part and the undistributed portion of the estate is not sufficient to satisfy the order, the personal representative is personally liable to the applicant for the amount that was distributed or the amount that is required to satisfy the order, whichever is less. R.S.O. 1990, c. F.3, s. 6 (19).

Order suspending administration

(20) On motion by the surviving spouse, the court may make an order suspending the administration of the deceased spouse's estate for the time and to the extent that the court decides. R.S.O. 1990, c. F.3, s. 6 (20).

Application to court

7. (1) The court may, on the application of a spouse, former spouse or deceased spouse's personal representative, determine any matter respecting the spouses' entitlement under section 5. R.S.O. 1990, c. F.3, s. 7 (1).

Personal action; estates

- (2) Entitlement under subsections 5 (1), (2) and (3) is personal as between the spouses but,
 - (a) an application based on subsection 5 (1) or (3) and commenced before a spouse's death may be continued by or against the deceased spouse's estate; and
 - (b) an application based on subsection 5 (2) may be made by or against a deceased spouse's estate. R.S.O. 1990, c. F.3, s. 7 (2).

Limitation

- (3) An application based on subsection 5 (1) or (2) shall not be brought after the earliest of,
 - (a) two years after the day the marriage is terminated by divorce or judgment of nullity;
 - (b) six years after the day the spouses separate and there is no reasonable prospect that they will resume cohabitation;
 - (c) six months after the first spouse's death. R.S.O. 1990, c. F.3, s. 7 (3).

Statement of property

8. In an application under section 7, each party shall serve on the other and file with the court, in the manner and form prescribed by the rules of the court, a statement verified by oath or statutory declaration disclosing particulars of,

- (a) the party's property and debts and other liabilities,
 - (i) as of the date of the marriage,
 - (ii) as of the valuation date, and
 - (iii) as of the date of the statement;
- (b) the deductions that the party claims under the definition of “net family property”;

- (c) the exclusions that the party claims under subsection 4 (2); and
- (d) all property that the party disposed of during the two years immediately preceding the making of the statement, or during the marriage, whichever period is shorter. R.S.O. 1990, c. F.3, s. 8; 2009, c. 11, s. 24.

Powers of court

- 9.** (1) In an application under section 7, the court may order,
- (a) that one spouse pay to the other spouse the amount to which the court finds that spouse to be entitled under this Part;
 - (b) that security, including a charge on property, be given for the performance of an obligation imposed by the order;
 - (c) that, if necessary to avoid hardship, an amount referred to in clause (a) be paid in instalments during a period not exceeding ten years or that payment of all or part of the amount be delayed for a period not exceeding ten years; and
 - (d) that, if appropriate to satisfy an obligation imposed by the order,
 - (i) property be transferred to or in trust for or vested in a spouse, whether absolutely, for life or for a term of years, or
 - (ii) any property be partitioned or sold. R.S.O. 1990, c. F.3, s. 9 (1); 2009, c. 11, s. 25.

Financial information, inspections

- (2) The court may, at the time of making an order for instalment or delayed payments or on motion at a later time, order that the spouse who has the obligation to make payments shall,
- (a) furnish the other spouse with specified financial information, which may include periodic financial statements; and
 - (b) permit inspections of specified property of the spouse by or on behalf of the other spouse, as the court directs. R.S.O. 1990, c. F.3, s. 9 (2).

Variation

(3) If the court is satisfied that there has been a material change in the circumstances of the spouse who has the obligation to make instalment or delayed payments, the court may, on motion, vary the order, but shall not vary the amount to which the court found the spouse to be entitled under this Part. R.S.O. 1990, c. F.3, s. 9 (3).

Ten-year period

(4) Subsections (3) and 2 (8) (extension of times) do not permit the postponement of payment beyond the ten-year period mentioned in clause (1) (c). R.S.O. 1990, c. F.3, s. 9 (4).

Determination of questions of title between spouses

- 10.** (1) A person may apply to the court for the determination of a question between that person and his or her spouse or former spouse as to the ownership or right to possession of particular property, other than a question arising out of an equalization of net family properties under section 5, and the court may,
- (a) declare the ownership or right to possession;
 - (b) if the property has been disposed of, order payment in compensation for the interest of either party;
 - (c) order that the property be partitioned or sold for the purpose of realizing the interests in it; and
 - (d) order that either or both spouses give security, including a charge on property, for the performance of an obligation imposed by the order,

and may make ancillary orders or give ancillary directions. R.S.O. 1990, c. F.3, s. 10 (1).

Estates

(2) An application based on subsection (1) may be made by or continued against the estate of a deceased spouse. R.S.O. 1990, c. F.3, s. 10 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Interest in a pension plan

Imputed value for family law purposes

10.1 (1) The imputed value, for family law purposes, of a spouse's interest in a pension plan to which the *Pension Benefits Act* applies is determined in accordance with section 67.2 of that Act. 2009, c. 11, s. 26.

Same

(2) The imputed value, for family law purposes, of a spouse's interest in any other pension plan is determined, where reasonably possible, in accordance with section 67.2 of the *Pension Benefits Act* with necessary modifications. 2009, c. 11, s. 26.

Order for immediate transfer of a lump sum

(3) An order made under section 9 or 10 may provide for the immediate transfer of a lump sum out of a pension plan but, except as permitted under subsection (5), not for any other division of a spouse's interest in the plan. 2009, c. 11, s. 26.

Same

(4) In determining whether to order the immediate transfer of a lump sum out of a pension plan and in determining the amount to be transferred, the court may consider the following matters and such other matters as the court considers appropriate:

1. The nature of the assets available to each spouse at the time of the hearing.
2. The proportion of a spouse's net family property that consists of the imputed value, for family law purposes, of his or her interest in the pension plan.
3. The liquidity of the lump sum in the hands of the spouse to whom it would be transferred.
4. Any contingent tax liabilities in respect of the lump sum that would be transferred.
5. The resources available to each spouse to meet his or her needs in retirement and the desirability of maintaining those resources. 2009, c. 11, s. 26.

Order for division of pension payments

(5) If payment of the first instalment of a spouse's pension under a pension plan is due on or before the valuation date, an order made under section 9 or 10 may provide for the division of pension payments but not for any other division of the spouse's interest in the plan. 2009, c. 11, s. 26.

Same

(6) Subsections 9 (2) and (4) do not apply with respect to an order made under section 9 or 10 that provides for the division of pension payments. 2009, c. 11, s. 26.

Restrictions re certain pension plans

(7) If the *Pension Benefits Act* applies to the pension plan, the restrictions under sections 67.3 and 67.4 of that Act apply with respect to the division of the spouse's interest in the plan by an order under section 9 or 10. 2009, c. 11, s. 26.

Transition, valuation date

(8) This section applies whether the valuation date is before, on or after the date on which this section comes into force. 2009, c. 11, s. 26.

Transition, previous orders

(9) This section does not apply to an order made before the date on which this section comes into force that requires one spouse to pay to the other spouse the amount to which that spouse is entitled under section 5. 2009, c. 11, s. 26.

See: 2009, c. 11, ss. 26, 53 (2).

Operating business or farm

11. (1) An order made under section 9 or 10 shall not be made so as to require or result in the sale of an operating business or farm or so as to seriously impair its operation, unless there is no reasonable alternative method of satisfying the award. R.S.O. 1990, c. F.3, s. 11 (1).

Idem

- (2) To comply with subsection (1), the court may,
- (a) order that one spouse pay to the other a share of the profits from the business or farm; and
 - (b) if the business or farm is incorporated, order that one spouse transfer or have the corporation issue to the other shares in the corporation. R.S.O. 1990, c. F.3, s. 11 (2).

Orders for preservation

12. In an application under section 7 or 10, if the court considers it necessary for the protection of the other spouse's interests under this Part, the court may make an interim or final order,

- (a) restraining the depletion of a spouse's property; and
- (b) for the possession, delivering up, safekeeping and preservation of the property. R.S.O. 1990, c. F.3, s. 12.

Variation and realization of security

13. If the court has ordered security or charged a property with security for the performance of an obligation under this Part, the court may, on motion,

- (a) vary or discharge the order; or
- (b) on notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge. R.S.O. 1990, c. F.3, s. 13.

Order regarding conduct

13.1 In making any order under this Part, the court may also make an interim order prohibiting, in whole or in part, a party from directly or indirectly contacting or communicating with another party, if the court determines that the order is necessary to ensure that an application under this Part is dealt with justly. 2009, c. 11, s. 27.

Presumptions

14. The rule of law applying a presumption of a resulting trust shall be applied in questions of the ownership of property between spouses, as if they were not married, except that,

- (a) the fact that property is held in the name of spouses as joint tenants is proof, in the absence of evidence to the contrary, that the spouses are intended to own the property as joint tenants; and
- (b) money on deposit in the name of both spouses shall be deemed to be in the name of the spouses as joint tenants for the purposes of clause (a). R.S.O. 1990, c. F.3, s. 14; 2005, c. 5, s. 27 (3).

Conflict of laws

15. The property rights of spouses arising out of the marital relationship are governed by the internal law of the place where both spouses had their last common habitual residence or, if there is no place where the spouses had a common habitual residence, by the law of Ontario. R.S.O. 1990, c. F.3, s. 15.

Application of Part

- 16.** (1) This Part applies to property owned by spouses,
- (a) whether they were married before or after the 1st day of March, 1986; and
 - (b) whether the property was acquired before or after that day. R.S.O. 1990, c. F.3, s. 16 (1).

Application of s. 14

(2) Section 14 applies whether the event giving rise to the presumption occurred before or after the 1st day of March, 1986. R.S.O. 1990, c. F.3, s. 16 (2).

**PART II
MATRIMONIAL HOME**

Definitions

17. In this Part,

“court” means a court as defined in subsection 1 (1) but does not include the Ontario Court of Justice; (“tribunal”)

“property” means real or personal property. (“bien”) R.S.O. 1990, c. F.3, s. 17; 2006, c. 19, Sched. C, s. 1 (2).

Matrimonial home

18. (1) Every property in which a person has an interest and that is or, if the spouses have separated, was at the time of separation ordinarily occupied by the person and his or her spouse as their family residence is their matrimonial home. R.S.O. 1990, c. F.3, s. 18 (1).

Ownership of shares

(2) The ownership of a share or shares, or of an interest in a share or shares, of a corporation entitling the owner to occupy a housing unit owned by the corporation shall be deemed to be an interest in the unit for the purposes of subsection (1). R.S.O. 1990, c. F.3, s. 18 (2).

Residence on farmland, etc.

(3) If property that includes a matrimonial home is normally used for a purpose other than residential, the matrimonial home is only the part of the property that may reasonably be regarded as necessary to the use and enjoyment of the residence. R.S.O. 1990, c. F.3, s. 18 (3).

Possession of matrimonial home

19. (1) Both spouses have an equal right to possession of a matrimonial home. R.S.O. 1990, c. F.3, s. 19 (1).

Idem

(2) When only one of the spouses has an interest in a matrimonial home, the other spouse's right of possession,

(a) is personal as against the first spouse; and

(b) ends when they cease to be spouses, unless a separation agreement or court order provides otherwise. R.S.O. 1990, c. F.3, s. 19 (2).

Designation of matrimonial home

20. (1) One or both spouses may designate property owned by one or both of them as a matrimonial home, in the form prescribed by the regulations made under this Act. R.S.O. 1990, c. F.3, s. 20 (1); 2009, c. 11, s. 28 (1).

Contiguous property

(2) The designation may include property that is described in the designation and is contiguous to the matrimonial home. R.S.O. 1990, c. F.3, s. 20 (2).

Registration

(3) The designation may be registered in the proper land registry office. R.S.O. 1990, c. F.3, s. 20 (3).

Effect of designation by both spouses

(4) On the registration of a designation made by both spouses, any other property that is a matrimonial home under section 18 but is not designated by both spouses ceases to be a matrimonial home. R.S.O. 1990, c. F.3, s. 20 (4).

Effect of designation by one spouse

(5) On the registration of a designation made by one spouse only, any other property that is a matrimonial home under section 18 remains a matrimonial home. R.S.O. 1990, c. F.3, s. 20 (5).

Cancellation of designation

(6) The designation of a matrimonial home is cancelled, and the property ceases to be a matrimonial home, on the registration or deposit of,

(a) a cancellation, executed by the person or persons who made the original designation, in the form prescribed by the regulations made under this Act;

(b) a decree absolute of divorce or judgment of nullity;

(c) an order under clause 23 (e) cancelling the designation; or

(d) proof of death of one of the spouses. R.S.O. 1990, c. F.3, s. 20 (6); 2009, c. 11, s. 28 (2).

Revival of other matrimonial homes

(7) When a designation of a matrimonial home made by both spouses is cancelled, section 18 applies again in respect of other property that is a matrimonial home. R.S.O. 1990, c. F.3, s. 20 (7).

Alienation of matrimonial home

21. (1) No spouse shall dispose of or encumber an interest in a matrimonial home unless,

(a) the other spouse joins in the instrument or consents to the transaction;

(b) the other spouse has released all rights under this Part by a separation agreement;

(c) a court order has authorized the transaction or has released the property from the application of this Part; or

- (d) the property is not designated by both spouses as a matrimonial home and a designation of another property as a matrimonial home, made by both spouses, is registered and not cancelled. R.S.O. 1990, c. F.3, s. 21 (1).

Setting aside transaction

(2) If a spouse disposes of or encumbers an interest in a matrimonial home in contravention of subsection (1), the transaction may be set aside on an application under section 23, unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice, at the time of acquiring it or making an agreement to acquire it, that the property was a matrimonial home. R.S.O. 1990, c. F.3, s. 21 (2).

Proof that property not a matrimonial home

- (3) For the purpose of subsection (2), a statement by the person making the disposition or encumbrance,
- (a) verifying that he or she is not, or was not, a spouse at the time of the disposition or encumbrance;
 - (b) verifying that the person is a spouse who is not separated from his or her spouse and that the property is not ordinarily occupied by the spouses as their family residence;
 - (c) verifying that the person is a spouse who is separated from his or her spouse and that the property was not ordinarily occupied by the spouses, at the time of their separation, as their family residence;
 - (d) where the property is not designated by both spouses as a matrimonial home, verifying that a designation of another property as a matrimonial home, made by both spouses, is registered and not cancelled; or
 - (e) verifying that the other spouse has released all rights under this Part by a separation agreement,

shall, unless the person to whom the disposition or encumbrance is made had notice to the contrary, be deemed to be sufficient proof that the property is not a matrimonial home. R.S.O. 1990, c. F.3, s. 21 (3).

Idem, attorney's personal knowledge

(4) The statement shall be deemed to be sufficient proof that the property is not a matrimonial home if it is made by the attorney of the person making the disposition or encumbrance, on the basis of the attorney's personal knowledge. R.S.O. 1990, c. F.3, s. 21 (4).

Liens arising by operation of law

(5) This section does not apply to the acquisition of an interest in property by operation of law or to the acquisition of a lien under section 48 of the *Legal Aid Services Act, 1998*. R.S.O. 1990, c. F.3, s. 21 (5); 1998, c. 26, s. 102.

Right of redemption and to notice

22. (1) When a person proceeds to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is a matrimonial home, the spouse who has a right of possession under section 19 has the same right of redemption or relief against forfeiture as the other spouse and is entitled to the same notice respecting the claim and its enforcement or realization. R.S.O. 1990, c. F.3, s. 22 (1).

Service of notice

(2) A notice to which a spouse is entitled under subsection (1) shall be deemed to be sufficiently given if served or given personally or by registered mail addressed to the spouse at his or her usual or last known address or, if none, the address of the matrimonial home, and, if notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing. R.S.O. 1990, c. F.3, s. 22 (2).

Idem: power of sale

(3) When a person exercises a power of sale against property that is a matrimonial home, sections 33 and 34 of the *Mortgages Act* apply and subsection (2) does not apply. R.S.O. 1990, c. F.3, s. 22 (3); 1993, c. 27, Sched.

Payments by spouse

(4) If a spouse makes a payment in exercise of the right conferred by subsection (1), the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture. R.S.O. 1990, c. F.3, s. 22 (4).

Realization may continue in spouse's absence

(5) Despite any other Act, when a person who proceeds to realize upon a lien, encumbrance or execution or exercises a forfeiture does not have sufficient particulars of a spouse for the purpose and there is no response to a notice given under subsection (2) or under section 33 of the *Mortgages Act*, the realization or exercise of forfeiture may continue in the absence and without regard to the interest of the spouse and the spouse's rights under this section end on the completion of the realization or forfeiture. R.S.O. 1990, c. F.3, s. 22 (5); 1993, c. 27, Sched.

Powers of court respecting alienation

- 23.** The court may, on the application of a spouse or person having an interest in property, by order,
- (a) determine whether or not the property is a matrimonial home and, if so, its extent;
 - (b) authorize the disposition or encumbrance of the matrimonial home if the court finds that the spouse whose consent is required,
 - (i) cannot be found or is not available,
 - (ii) is not capable of giving or withholding consent, or
 - (iii) is unreasonably withholding consent,subject to any conditions, including provision of other comparable accommodation or payment in place of it, that the court considers appropriate;
 - (c) dispense with a notice required to be given under section 22;
 - (d) direct the setting aside of a transaction disposing of or encumbering an interest in the matrimonial home contrary to subsection 21 (1) and the revesting of the interest or any part of it on the conditions that the court considers appropriate; and
 - (e) cancel a designation made under section 20 if the property is not a matrimonial home. R.S.O. 1990, c. F.3, s. 23.

Order for possession of matrimonial home

- 24.** (1) Regardless of the ownership of a matrimonial home and its contents, and despite section 19 (spouse's right of possession), the court may on application, by order,
- (a) provide for the delivering up, safekeeping and preservation of the matrimonial home and its contents;
 - (b) direct that one spouse be given exclusive possession of the matrimonial home or part of it for the period that the court directs and release other property that is a matrimonial home from the application of this Part;
 - (c) direct a spouse to whom exclusive possession of the matrimonial home is given to make periodic payments to the other spouse;
 - (d) direct that the contents of the matrimonial home, or any part of them,
 - (i) remain in the home for the use of the spouse given possession, or
 - (ii) be removed from the home for the use of a spouse or child;
 - (e) order a spouse to pay for all or part of the repair and maintenance of the matrimonial home and of other liabilities arising in respect of it, or to make periodic payments to the other spouse for those purposes;
 - (f) authorize the disposition or encumbrance of a spouse's interest in the matrimonial home, subject to the other spouse's right of exclusive possession as ordered; and
 - (g) where a false statement is made under subsection 21 (3), direct,
 - (i) the person who made the false statement, or
 - (ii) a person who knew at the time he or she acquired an interest in the property that the statement was false and afterwards conveyed the interest,to substitute other real property for the matrimonial home, or direct the person to set aside money or security to stand in place of it, subject to any conditions that the court considers appropriate. R.S.O. 1990, c. F.3, s. 24 (1).

Temporary or interim order

- (2) The court may, on motion, make a temporary or interim order under clause (1) (a), (b), (c), (d) or (e). R.S.O. 1990, c. F.3, s. 24 (2).

Order for exclusive possession: criteria

- (3) In determining whether to make an order for exclusive possession, the court shall consider,
- (a) the best interests of the children affected;
 - (b) any existing orders under Part I (Family Property) and any existing support orders;

- (c) the financial position of both spouses;
- (d) any written agreement between the parties;
- (e) the availability of other suitable and affordable accommodation; and
- (f) any violence committed by a spouse against the other spouse or the children. R.S.O. 1990, c. F.3, s. 24 (3).

Best interests of child

- (4) In determining the best interests of a child, the court shall consider,
 - (a) the possible disruptive effects on the child of a move to other accommodation; and
 - (b) the child's views and preferences, if they can reasonably be ascertained. R.S.O. 1990, c. F.3, s. 24 (4).

Offence

- (5) A person who contravenes an order for exclusive possession is guilty of an offence and upon conviction is liable,
 - (a) in the case of a first offence, to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both; and
 - (b) in the case of a second or subsequent offence, to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years, or to both. R.S.O. 1990, c. F.3, s. 24 (5).

Arrest without warrant

(6) A police officer may arrest without warrant a person the police officer believes on reasonable and probable grounds to have contravened an order for exclusive possession. R.S.O. 1990, c. F.3, s. 24 (6).

Existing orders

(7) Subsections (5) and (6) also apply in respect of contraventions, committed on or after the 1st day of March, 1986, of orders for exclusive possession made under Part III of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980. R.S.O. 1990, c. F.3, s. 24 (7).

Variation

Possessory order

25. (1) On the application of a person named in an order made under clause 24 (1) (a), (b), (c), (d) or (e) or his or her personal representative, if the court is satisfied that there has been a material change in circumstances, the court may discharge, vary or suspend the order. R.S.O. 1990, c. F.3, s. 25 (1).

Conditions

(2) On the motion of a person who is subject to conditions imposed in an order made under clause 23 (b) or (d) or 24 (1) (g), or his or her personal representative, if the court is satisfied that the conditions are no longer appropriate, the court may discharge, vary or suspend them. R.S.O. 1990, c. F.3, s. 25 (2).

Existing orders

(3) Subsections (1) and (2) also apply to orders made under the corresponding provisions of Part III of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980. R.S.O. 1990, c. F.3, s. 25 (3).

Order regarding conduct

25.1 In making any order under this Part, the court may also make an interim order prohibiting, in whole or in part, a party from directly or indirectly contacting or communicating with another party, if the court determines that the order is necessary to ensure that an application under this Part is dealt with justly. 2009, c. 11, s. 29.

Spouse without interest in matrimonial home

Joint tenancy with third person

26. (1) If a spouse dies owning an interest in a matrimonial home as a joint tenant with a third person and not with the other spouse, the joint tenancy shall be deemed to have been severed immediately before the time of death. R.S.O. 1990, c. F.3, s. 26 (1).

Sixty-day period after spouse's death

(2) Despite clauses 19 (2) (a) and (b) (termination of spouse's right of possession), a spouse who has no interest in a matrimonial home but is occupying it at the time of the other spouse's death, whether under an order for exclusive possession

or otherwise, is entitled to retain possession against the spouse's estate, rent free, for sixty days after the spouse's death. R.S.O. 1990, c. F.3, s. 26 (2).

Registration of order

27. Orders made under this Part or under Part III of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980 are registrable against land under the *Registry Act* and the *Land Titles Act*. R.S.O. 1990, c. F.3, s. 27.

Application of Part

28. (1) This Part applies to matrimonial homes that are situated in Ontario. R.S.O. 1990, c. F.3, s. 28 (1).

Idem

(2) This Part applies,

(a) whether the spouses were married before or after the 1st day of March, 1986; and

(b) whether the matrimonial home was acquired before or after that day. R.S.O. 1990, c. F.3, s. 28 (2).

**PART III
SUPPORT OBLIGATIONS**

Definitions

29. In this Part,

“dependant” means a person to whom another has an obligation to provide support under this Part; (“personne à charge”)

“spouse” means a spouse as defined in subsection 1 (1), and in addition includes either of two persons who are not married to each other and have cohabited,

(a) continuously for a period of not less than three years, or

(b) in a relationship of some permanence, if they are the natural or adoptive parents of a child. (“conjoint”) R.S.O. 1990, c. F.3, s. 29; 1999, c. 6, s. 25 (2); 2005, c. 5, s. 27 (4-6); 2009, c. 11, s. 30.

Obligation of spouses for support

30. Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so. R.S.O. 1990, c. F.3, s. 30; 1999, c. 6, s. 25 (3); 2005, c. 5, s. 27 (7).

Obligation of parent to support child

31. (1) Every parent has an obligation to provide support for his or her unmarried child who is a minor or is enrolled in a full time program of education, to the extent that the parent is capable of doing so. R.S.O. 1990, c. F.3, s. 31 (1); 1997, c. 20, s. 2.

Idem

(2) The obligation under subsection (1) does not extend to a child who is sixteen years of age or older and has withdrawn from parental control. R.S.O. 1990, c. F.3, s. 31 (2).

Obligation of child to support parent

32. Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for or provided support for the child, to the extent that the child is capable of doing so. R.S.O. 1990, c. F.3, s. 32.

Order for support

33. (1) A court may, on application, order a person to provide support for his or her dependants and determine the amount of support. R.S.O. 1990, c. F.3, s. 33 (1).

Applicants

(2) An application for an order for the support of a dependant may be made by the dependant or the dependant's parent. R.S.O. 1990, c. F.3, s. 33 (2).

Same

(2.1) The *Limitations Act, 2002* applies to an application made by the dependant's parent or by an agency referred to in subsection (3) as if it were made by the dependant himself or herself. 2002, c. 24, Sched. B, s. 37.

Same

(3) An application for an order for the support of a dependant who is the respondent's spouse or child may also be made by one of the following agencies,

- (a) the Ministry of Community and Social Services in the name of the Minister;
- (b) a municipality, excluding a lower-tier municipality in a regional municipality;
- (c) a district social services administration board under the *District Social Services Administration Boards Act*;
- (d) REPEALED: 2006, c. 19, Sched. B, s. 9.
- (e) a delivery agent under the *Ontario Works Act, 1997*,

if the agency is providing or has provided a benefit under the *Family Benefits Act*, assistance under the *General Welfare Assistance Act* or the *Ontario Works Act, 1997* or income support under the *Ontario Disability Support Program Act, 1997* in respect of the dependant's support, or if an application for such a benefit or assistance has been made to the agency by or on behalf of the dependant. 1997, c. 25, Sched. E, s. 1; 1999, c. 6, s. 25 (4); 2002, c. 17, Sched. F, Table; 2005, c. 5, s. 27 (8); 2006, c. 19, Sched. B, s. 9.

Setting aside domestic contract

(4) The court may set aside a provision for support or a waiver of the right to support in a domestic contract and may determine and order support in an application under subsection (1) although the contract contains an express provision excluding the application of this section,

- (a) if the provision for support or the waiver of the right to support results in unconscionable circumstances;
- (b) if the provision for support is in favour of or the waiver is by or on behalf of a dependant who qualifies for an allowance for support out of public money; or
- (c) if there is default in the payment of support under the contract at the time the application is made. R.S.O. 1990, c. F.3, s. 33 (4); 2006, c. 1, s. 5 (1).

Adding party

(5) In an application the court may, on a respondent's motion, add as a party another person who may have an obligation to provide support to the same dependant. R.S.O. 1990, c. F.3, s. 33 (5).

Idem

(6) In an action in the Superior Court of Justice, the defendant may add as a third party another person who may have an obligation to provide support to the same dependant. R.S.O. 1990, c. F.3, s. 33 (6); 2006, c. 19, Sched. C, s. 1 (1).

Purposes of order for support of child

- (7) An order for the support of a child should,
- (a) recognize that each parent has an obligation to provide support for the child;
 - (b) apportion the obligation according to the child support guidelines. R.S.O. 1990, c. F.3, s. 33 (7); 1997, c. 20, s. 3 (1).

Purposes of order for support of spouse

- (8) An order for the support of a spouse should,
- (a) recognize the spouse's contribution to the relationship and the economic consequences of the relationship for the spouse;
 - (b) share the economic burden of child support equitably;
 - (c) make fair provision to assist the spouse to become able to contribute to his or her own support; and
 - (d) relieve financial hardship, if this has not been done by orders under Parts I (Family Property) and II (Matrimonial Home). R.S.O. 1990, c. F.3, s. 33 (8); 1999, c. 6, s. 25 (5); 2005, c. 5, s. 27 (9).

Determination of amount for support of spouses, parents

(9) In determining the amount and duration, if any, of support for a spouse or parent in relation to need, the court shall consider all the circumstances of the parties, including,

- (a) the dependant's and respondent's current assets and means;
- (b) the assets and means that the dependant and respondent are likely to have in the future;

- (c) the dependant's capacity to contribute to his or her own support;
- (d) the respondent's capacity to provide support;
- (e) the dependant's and respondent's age and physical and mental health;
- (f) the dependant's needs, in determining which the court shall have regard to the accustomed standard of living while the parties resided together;
- (g) the measures available for the dependant to become able to provide for his or her own support and the length of time and cost involved to enable the dependant to take those measures;
- (h) any legal obligation of the respondent or dependant to provide support for another person;
- (i) the desirability of the dependant or respondent remaining at home to care for a child;
- (j) a contribution by the dependant to the realization of the respondent's career potential;
- (k) REPEALED: 1997, c. 20, s. 3 (3).
- (l) if the dependant is a spouse,
 - (i) the length of time the dependant and respondent cohabited,
 - (ii) the effect on the spouse's earning capacity of the responsibilities assumed during cohabitation,
 - (iii) whether the spouse has undertaken the care of a child who is of the age of eighteen years or over and unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents,
 - (iv) whether the spouse has undertaken to assist in the continuation of a program of education for a child eighteen years of age or over who is unable for that reason to withdraw from the charge of his or her parents,
 - (v) any housekeeping, child care or other domestic service performed by the spouse for the family, as if the spouse were devoting the time spent in performing that service in remunerative employment and were contributing the earnings to the family's support,
- (v.1) REPEALED: 2005, c. 5, s. 27 (12).
- (vi) the effect on the spouse's earnings and career development of the responsibility of caring for a child; and
- (m) any other legal right of the dependant to support, other than out of public money. R.S.O. 1990, c. F.3, s. 33 (9); 1997, c. 20, s. 3 (2, 3); 1999, c. 6, s. 25 (6-9); 2005, c. 5, s. 27 (10-13).

Conduct

(10) The obligation to provide support for a spouse exists without regard to the conduct of either spouse, but the court may in determining the amount of support have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship. R.S.O. 1990, c. F.3, s. 33 (10); 1999, c. 6, s. 25 (10); 2005, c. 5, s. 27 (14).

Application of child support guidelines

(11) A court making an order for the support of a child shall do so in accordance with the child support guidelines. 1997, c. 20, s. 3 (4).

Exception: special provisions

(12) Despite subsection (11), a court may award an amount that is different from the amount that would be determined in accordance with the child support guidelines if the court is satisfied,

- (a) that special provisions in an order or a written agreement respecting the financial obligations of the parents, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and
- (b) that the application of the child support guidelines would result in an amount of child support that is inequitable given those special provisions. 1997, c. 20, s. 3 (4).

Reasons

(13) Where the court awards, under subsection (12), an amount that is different from the amount that would be determined in accordance with the child support guidelines, the court shall record its reasons for doing so. 1997, c. 20, s. 3 (4).

Exception: consent orders

(14) Despite subsection (11), a court may award an amount that is different from the amount that would be determined in accordance with the child support guidelines on the consent of both parents if the court is satisfied that,

- (a) reasonable arrangements have been made for the support of the child to whom the order relates; and
- (b) where support for the child is payable out of public money, the arrangements do not provide for an amount less than the amount that would be determined in accordance with the child support guidelines. 1997, c. 20, s. 3 (4).

Reasonable arrangements

(15) For the purposes of clause (14) (a), in determining whether reasonable arrangements have been made for the support of a child,

- (a) the court shall have regard to the child support guidelines; and
- (b) the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the child support guidelines. 1997, c. 20, s. 3 (4).

Powers of court

34. (1) In an application under section 33, the court may make an interim or final order,

- (a) requiring that an amount be paid periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;
- (b) requiring that a lump sum be paid or held in trust;
- (c) requiring that property be transferred to or in trust for or vested in the dependant, whether absolutely, for life or for a term of years;
- (d) respecting any matter authorized to be ordered under clause 24 (1) (a), (b), (c), (d) or (e) (matrimonial home);
- (e) requiring that some or all of the money payable under the order be paid into court or to another appropriate person or agency for the dependant's benefit;
- (f) requiring that support be paid in respect of any period before the date of the order;
- (g) requiring payment to an agency referred to in subsection 33 (3) of an amount in reimbursement for a benefit or assistance referred to in that subsection, including a benefit or assistance provided before the date of the order;
- (h) requiring payment of expenses in respect of a child's prenatal care and birth;
- (i) requiring that a spouse who has a policy of life insurance as defined under the *Insurance Act* designate the other spouse or a child as the beneficiary irrevocably;
- (j) requiring that a spouse who has an interest in a pension plan or other benefit plan designate the other spouse or a child as beneficiary under the plan and not change that designation; and
- (k) requiring the securing of payment under the order, by a charge on property or otherwise. R.S.O. 1990, c. F.3, s. 34 (1); 1999, c. 6, s. 25 (11); 2004, c. 31, Sched. 38, s. 2 (3); 2005, c. 5, s. 27 (15); 2009, c. 11, s. 31.

Limitation on jurisdiction of Ontario Court of Justice

(2) The Ontario Court of Justice shall not make an order under clause (1) (b), (c), (i), (j) or (k) except for the provision of necessities or to prevent the dependant from becoming or continuing to be a public charge, and shall not make an order under clause (d). R.S.O. 1990, c. F.3, s. 34 (2); 2006, c. 19, Sched. C, s. 1 (2).

Assignment of support

(3) An order for support may be assigned to an agency referred to in subsection 33 (3). R.S.O. 1990, c. F.3, s. 34 (3).

Same

(3.1) An agency referred to in subsection 33 (3) to whom an order for support is assigned is entitled to the payments due under the order and has the same right to be notified of and to participate in proceedings under this Act to vary, rescind, suspend or enforce the order as the person who would otherwise be entitled to the payments. 1997, c. 20, s. 4 (1).

Support order binds estate

(4) An order for support binds the estate of the person having the support obligation unless the order provides otherwise. R.S.O. 1990, c. F.3, s. 34 (4).

Indexing of support payments

(5) In an order made under clause (1) (a), other than an order for the support of a child, the court may provide that the amount payable shall be increased annually on the order's anniversary date by the indexing factor, as defined in subsection (6), for November of the previous year. R.S.O. 1990, c. F.3, s. 34 (5); 1997, c. 20, s. 4 (2).

Definition

(6) The indexing factor for a given month is the percentage change in the Consumer Price Index for Canada for prices of all items since the same month of the previous year, as published by Statistics Canada. R.S.O. 1990, c. F.3, s. 34 (6).

Domestic contract, etc., may be filed with court

35. (1) A person who is a party to a domestic contract may file the contract with the clerk of the Ontario Court of Justice or of the Family Court of the Superior Court of Justice together with the person's affidavit stating that the contract is in effect and has not been set aside or varied by a court or agreement. R.S.O. 1990, c. F.3, s. 35 (1); 2006, c. 1, s. 5 (2); 2006, c. 19, Sched. C, s. 1 (2, 4); 2009, c. 11, s. 32 (1).

Interpretation

(1.1) For the purposes of subsection (1), a party to a domestic contract includes a party's guardian of property or attorney for property, if the guardian or attorney entered into the domestic contract on behalf of the party under the authority of subsection 55 (3). 2009, c. 33, Sched. 2, s. 34 (3).

Effect of filing

(2) A provision for support or maintenance contained in a contract that is filed in this manner,

(a) may be enforced;

(b) may be varied under section 37; and

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is amended by striking out "and" at the end. See: 2009, c. 11, ss. 32 (2), 53 (2).

(c) except in the case of a provision for the support of a child, may be increased under section 38,

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by adding "and" at the end of clause (c), and by adding the following clause:

(d) in the case of a provision for the support of a child, may be recalculated under section 39.1,

See: 2009, c. 11, ss. 32 (2), 53 (2).

as if it were an order of the court where it is filed. 1997, c. 20, s. 5; 2006, c. 1, s. 5 (3).

Setting aside available

(3) Subsection 33 (4) (setting aside in unconscionable circumstances, etc.) applies to a contract that is filed in this manner. R.S.O. 1990, c. F.3, s. 35 (3); 2006, c. 1, s. 5 (4).

Enforcement available despite waiver

(4) Subsection (1) and clause (2) (a) apply despite an agreement to the contrary. R.S.O. 1990, c. F.3, s. 35 (4).

Existing contracts, etc.

(5) Subsections (1) and (2) also apply to contracts made before the 1st day of March, 1986. R.S.O. 1990, c. F.3, s. 35 (5); 2006, c. 1, s. 5 (5).

Existing arrears

(6) Clause (2) (a) also applies to arrears accrued before the 1st day of March, 1986. R.S.O. 1990, c. F.3, s. 35 (6).

Effect of divorce proceeding

36. (1) When a divorce proceeding is commenced under the *Divorce Act* (Canada), an application for support under this Part that has not been adjudicated is stayed, unless the court orders otherwise. R.S.O. 1990, c. F.3, s. 36 (1).

Arrears may be included in order

(2) The court that deals with a divorce proceeding under the *Divorce Act* (Canada) may determine the amount of arrears owing under an order for support made under this Part and make an order respecting that amount at the same time as it makes an order under the *Divorce Act* (Canada). R.S.O. 1990, c. F.3, s. 36 (2).

Idem

(3) If a marriage is terminated by divorce or judgment of nullity and the question of support is not adjudicated in the divorce or nullity proceedings, an order for support made under this Part continues in force according to its terms. R.S.O. 1990, c. F.3, s. 36 (3).

Application for variation

37. (1) An application to the court for variation of an order made or confirmed under this Part may be made by,

- (a) a dependant or respondent named in the order;
- (b) a parent of a dependant referred to in clause (a);
- (c) the personal representative of a respondent referred to in clause (a); or
- (d) an agency referred to in subsection 33 (3). 1997, c. 20, s. 6.

Powers of court: spouse and parent support

(2) In the case of an order for support of a spouse or parent, if the court is satisfied that there has been a material change in the dependant's or respondent's circumstances or that evidence not available on the previous hearing has become available, the court may,

- (a) discharge, vary or suspend a term of the order, prospectively or retroactively;
- (b) relieve the respondent from the payment of part or all of the arrears or any interest due on them; and
- (c) make any other order under section 34 that the court considers appropriate in the circumstances referred to in section 33. 1997, c. 20, s. 6; 1999, c. 6, s. 25 (12); 2005, c. 5, s. 27 (16).

Powers of court: child support

(2.1) In the case of an order for support of a child, if the court is satisfied that there has been a change in circumstances within the meaning of the child support guidelines or that evidence not available on the previous hearing has become available, the court may,

- (a) discharge, vary or suspend a term of the order, prospectively or retroactively;
- (b) relieve the respondent from the payment of part or all of the arrears or any interest due on them; and
- (c) make any other order for the support of a child that the court could make on an application under section 33. 1997, c. 20, s. 6.

Application of child support guidelines

(2.2) A court making an order under subsection (2.1) shall do so in accordance with the child support guidelines. 1997, c. 20, s. 6.

Exception: special provisions

(2.3) Despite subsection (2.2), a court may award an amount that is different from the amount that would be determined in accordance with the child support guidelines if the court is satisfied,

- (a) that special provisions in an order or a written agreement respecting the financial obligations of the parents, or the division or transfer of their property, directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and
- (b) that the application of the child support guidelines would result in an amount of child support that is inequitable given those special provisions. 1997, c. 20, s. 6.

Reasons

(2.4) Where the court awards, under subsection (2.3), an amount that is different from the amount that would be determined in accordance with the child support guidelines, the court shall record its reasons for doing so. 1997, c. 20, s. 6.

Exception: consent orders

(2.5) Despite subsection (2.2), a court may award an amount that is different from the amount that would be determined in accordance with the child support guidelines on the consent of both parents if the court is satisfied that,

- (a) reasonable arrangements have been made for the support of the child to whom the order relates; and
- (b) where support for the child is payable out of public money, the arrangements do not provide for an amount less than the amount that would be determined in accordance with the child support guidelines. 1997, c. 20, s. 6.

Reasonable arrangements

(2.6) For the purposes of clause (2.5) (a), in determining whether reasonable arrangements have been made for the support of a child,

- (a) the court shall have regard to the child support guidelines; and
- (b) the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the child support guidelines. 1997, c. 20, s. 6.

Limitation on applications for variation

(3) No application for variation shall be made within six months after the making of the order for support or the disposition of another application for variation in respect of the same order, except by leave of the court. R.S.O. 1990, c. F.3, s. 37 (3).

Indexing existing orders

Non-application to orders for child support

38. (1) This section does not apply to an order for the support of a child. 1997, c. 20, s. 7.

Application to have existing order indexed

(2) If an order made or confirmed under this Part is not indexed under subsection 34 (5), the dependant, or an agency referred to in subsection 33 (3), may apply to the court to have the order indexed in accordance with subsection 34 (5). R.S.O. 1990, c. F.3, s. 38 (1); 1997, c. 20, s. 7.

Power of court

(3) The court shall, unless the respondent shows that his or her income, assets and means have not increased sufficiently to permit the increase, order that the amount payable be increased by the indexing factor, as defined in subsection 34 (6), for November of the year before the year in which the application is made and be increased in the same way annually thereafter on the anniversary date of the order under this section. R.S.O. 1990, c. F.3, s. 38 (2); 1997, c. 20, s. 7.

Priority to child support

38.1 (1) Where a court is considering an application for the support of a child and an application for the support of a spouse, the court shall give priority to the support of the child in determining the applications. 1997, c. 20, s. 8; 1999, c. 6, s. 25 (13); 2005, c. 5, s. 27 (17).

Reasons

(2) Where as a result of giving priority to the support of a child, the court is unable to make an order for the support of a spouse or the court makes an order for the support of a spouse in an amount less than it otherwise would have, the court shall record its reasons for doing so. 1997, c. 20, s. 8; 1999, c. 6, s. 25 (14); 2005, c. 5, s. 27 (18).

Consequences of reduction or termination of child support

(3) Where as a result of giving priority to the support of a child, an order for the support of a spouse is not made or the amount of the order for the support of a spouse is less than it otherwise would have been, any material reduction or termination of the support for the child constitutes a material change of circumstances for the purposes of an application for the support of the spouse or for variation of an order for the support of the spouse. 1997, c. 20, s. 8; 1999, c. 6, s. 25 (15); 2005, c. 5, s. 27 (19).

(4) REPEALED: 2002, c. 24, Sched. B, s. 25.

Existing orders

39. (1) Sections 36 to 38 also apply to orders for maintenance or alimony made before the 31st day of March, 1978 or in proceedings commenced before the 31st day of March, 1978 and to orders for support made under Part II of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980. R.S.O. 1990, c. F.3, s. 39.

Combined support orders

(2) Where an application is made under section 37 to vary an order that provides a single amount of money for the combined support of one or more children and a spouse, the court shall rescind the order and treat the application as an application for an order for the support of a child and an application for an order for the support of a spouse. 1997, c. 20, s. 9; 1999, c. 6, s. 25 (17); 2005, c. 5, s. 27 (20).

Existing proceedings

(3) Where an application for the support of a child, including an application under section 37 to vary an order for the support of a child, is made before the day the *Uniform Federal and Provincial Child Support Guidelines Act, 1997* comes into force and the court has not considered any evidence in the application, other than in respect of an interim order, before that day, the proceeding shall be deemed to be an application under the *Family Law Act* as amended by the *Uniform Federal and Provincial Child Support Guidelines Act, 1997*, subject to such directions as the court considers appropriate. 1997, c. 20, s. 9.

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Recalculation of child support

39.1 (1) The amount payable for the support of a child under an order may be recalculated in accordance with this Act and the regulations made under this Act, by the child support service established by the regulations, in order to reflect updated income information. 2009, c. 11, s. 33.

Effect of recalculation

(2) Subject to any review or appeal process established by the regulations made under this Act, if the child support service recalculates an amount payable for the support of a child under an order, the recalculated amount is, 31 days after the date on which the parties to the order are notified of the recalculation in accordance with the regulations, deemed to be the amount payable under the order. 2009, c. 11, s. 33.

See: 2009, c. 11, ss. 33, 53 (2).

Restraining orders

40. The court may, on application, make an interim or final order restraining the depletion of a spouse's property that would impair or defeat a claim under this Part. R.S.O. 1990, c. F.3, s. 40; 1999, c. 6, s. 25 (18); 2005, c. 5, s. 27 (21).

Financial statement

41. In an application under section 33 or 37, each party shall serve on the other and file with the court a financial statement verified by oath or statutory declaration in the manner and form prescribed by the rules of the court. R.S.O. 1990, c. F.3, s. 41; 2009, c. 11, s. 34.

Obtaining information

Order for return by employer

42. (1) In an application under section 33 or 37, the court may order the employer of a party to the application to make a written return to the court showing the party's wages or other remuneration during the preceding twelve months. R.S.O. 1990, c. F.3, s. 42 (1).

Return as evidence

(2) A return purporting to be signed by the employer may be received in evidence as proof, in the absence of evidence to the contrary, of its contents. R.S.O. 1990, c. F.3, s. 42 (2).

Order for access to information

(3) The court may, on motion, make an order under subsection (4) if it appears to the court that, in order to make an application under section 33 or 37, the moving party needs to learn or confirm the proposed respondent's whereabouts. R.S.O. 1990, c. F.3, s. 42 (3).

Idem

(4) The order shall require the person or public body to whom it is directed to provide the court or the moving party with any information that is shown on a record in the person's or public body's possession or control and that indicates the proposed respondent's place of employment, address or location. R.S.O. 1990, c. F.3, s. 42 (4).

Crown bound

(5) This section binds the Crown in right of Ontario. R.S.O. 1990, c. F.3, s. 42 (5).

Arrest of absconding debtor

43. (1) If an application is made under section 33 or 37 and the court is satisfied that the respondent is about to leave Ontario and that there are reasonable grounds for believing that the respondent intends to evade his or her responsibilities under this Act, the court may issue a warrant for the respondent's arrest for the purpose of bringing him or her before the court. R.S.O. 1990, c. F.3, s. 43 (1).

Bail

(2) Section 150 (interim release by justice of the peace) of the *Provincial Offences Act* applies with necessary modifications to an arrest under the warrant. R.S.O. 1990, c. F.3, s. 43 (2).

Provisional orders

44. (1) In an application under section 33 or 37 in the Ontario Court (Provincial Division) or the Unified Family Court, the court shall proceed under this section, whether or not the respondent in the application files a financial statement, if,

- (a) the respondent fails to appear;
- (b) it appears to the court that the respondent resides in a locality in Ontario that is more than 150 kilometres away from the place where the court sits; and
- (c) the court is of the opinion, in the circumstances of the case, that the issues can be adequately determined by proceeding under this section. R.S.O. 1990, c. F.3, s. 44 (1).

Idem

(2) If the court determines that it would be proper to make a final order, were it not for the respondent's failure to appear, the court shall make an order for support that is provisional only and has no effect until it is confirmed by the Ontario Court (Provincial Division) or the Unified Family Court sitting nearest the place where the respondent resides. R.S.O. 1990, c. F.3, s. 44 (2).

Transmission for hearing

(3) The court that makes a provisional order shall send to the court in the locality in which the respondent resides copies of such documents and records, certified in such manner, as are prescribed by the rules of the court. R.S.O. 1990, c. F.3, s. 44 (3).

Show cause

(4) The court to which the documents and records are sent shall cause them to be served upon the respondent, together with a notice to file with the court the financial statement required by section 41, and to appear and show cause why the provisional order should not be confirmed. R.S.O. 1990, c. F.3, s. 44 (4).

Confirmation of order

(5) At the hearing, the respondent may raise any defence that might have been raised in the original proceeding, but if the respondent fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order without variation or with the variation that the court considers proper having regard to all the evidence. R.S.O. 1990, c. F.3, s. 44 (5).

Adjournment for further evidence

(6) If the respondent appears before the court and satisfies the court that for the purpose of a defence or for the taking of further evidence or otherwise it is necessary to remit the case to the court where the applicant resides, the court may remit the case and adjourn the proceeding for that purpose. R.S.O. 1990, c. F.3, s. 44 (6).

Where order not confirmed

(7) If the respondent appears before the court and the court, having regard to all the evidence, is of the opinion that the order ought not to be confirmed, the court shall remit the case to the court sitting where the order was made with a statement of the reasons for doing so, and the court sitting where the order was made shall dispose of the application in accordance with the statement. R.S.O. 1990, c. F.3, s. 44 (7).

Certificates as evidence

(8) A certificate certifying copies of documents or records for the purpose of this section and purporting to be signed by the clerk of the court is, without proof of the clerk's office or signature, admissible in evidence in a court to which it is transmitted under this section as proof, in the absence of evidence to the contrary, of the copy's authenticity. R.S.O. 1990, c. F.3, s. 44 (8).

Right of appeal

(9) No appeal lies from a provisional order made under this section, but a person bound by an order confirmed under this section has the same right of appeal as he or she would have had if the order had been made under section 34. R.S.O. 1990, c. F.3, s. 44 (9).

Necessities of life

Pledging credit of spouse

45. (1) During cohabitation, a spouse has authority to render himself or herself and his or her spouse jointly and severally liable to a third party for necessities of life, unless the spouse has notified the third party that he or she has withdrawn the authority. R.S.O. 1990, c. F.3, s. 45 (1); 1999, c. 6, s. 25 (19); 2005, c. 5, s. 27 (22).

Liability for necessities of minor

(2) If a person is entitled to recover against a minor in respect of the provision of necessities for the minor, every parent who has an obligation to support the minor is liable for them jointly and severally with the minor. R.S.O. 1990, c. F.3, s. 45 (2).

Recovery between persons jointly liable

(3) If persons are jointly and severally liable under this section, their liability to each other shall be determined in accordance with their obligation to provide support. R.S.O. 1990, c. F.3, s. 45 (3).

Common law supplanted

(4) This section applies in place of the rules of common law by which a wife may pledge her husband's credit. R.S.O. 1990, c. F.3, s. 45 (4).

Restraining order

46. (1) On application, the court may make an interim or final restraining order against a person described in subsection (2) if the applicant has reasonable grounds to fear for his or her own safety or for the safety of any child in his or her lawful custody. 2009, c. 11, s. 35.

Same

(2) A restraining order under subsection (1) may be made against,

(a) a spouse or former spouse of the applicant; or

(b) a person other than a spouse or former spouse of the applicant, if the person is cohabiting with the applicant or has cohabited with the applicant for any period of time. 2009, c. 11, s. 35.

Provisions of order

(3) A restraining order made under subsection (1) shall be in the form prescribed by the rules of court and may contain one or more of the following provisions, as the court considers appropriate:

1. Restraining the respondent, in whole or in part, from directly or indirectly contacting or communicating with the applicant or any child in the applicant's lawful custody.

2. Restraining the respondent from coming within a specified distance of one or more locations.

3. Specifying one or more exceptions to the provisions described in paragraphs 1 and 2.

4. Any other provision that the court considers appropriate. 2009, c. 11, s. 35.

Transition

(4) This section, as it read immediately before the day section 35 of the *Family Statute Law Amendment Act, 2009* came into force, continues to apply to,

(a) any prosecution or other proceeding begun under this section before that day; and

(b) any order made under this section that was in force immediately before that day. 2009, c. 11, s. 36.

Application for custody

47. The court may direct that an application for support stand over until an application for custody under the *Children's Law Reform Act* has been determined. R.S.O. 1990, c. F.3, s. 47.

Order regarding conduct

47.1 In making any order under this Part, other than an order under section 46, the court may also make an interim order prohibiting, in whole or in part, a party from directly or indirectly contacting or communicating with another party, if the court determines that the order is necessary to ensure that an application under this Part is dealt with justly. 2009, c. 11, s. 36.

Appeal from Ontario Court of Justice

48. An appeal lies from an order of the Ontario Court of Justice under this Part to the Superior Court of Justice. R.S.O. 1990, c. F.3, s. 48; 2006, c. 19, Sched. C, s. 1 (1, 2).

Contempt of orders of Ontario Court of Justice

49. (1) In addition to its powers in respect of contempt, the Ontario Court of Justice may punish by fine or imprisonment, or by both, any wilful contempt of or resistance to its process, rules or orders under this Act, but the fine shall not exceed \$5,000 nor shall the imprisonment exceed ninety days. R.S.O. 1990, c. F.3, s. 49 (1); 2006, c. 19, Sched. C, s. 1 (2).

Conditions of imprisonment

(2) An order for imprisonment under subsection (1) may be conditional upon default in the performance of a condition set out in the order and may provide for the imprisonment to be served intermittently. R.S.O. 1990, c. F.3, s. 49 (2).

50. REPEALED: 2002, c. 24, Sched. B, s. 25.

PART IV DOMESTIC CONTRACTS

Definitions

51. In this Part,

“cohabitation agreement” means an agreement entered into under section 53; (“accord de cohabitation”)

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

“family arbitration” means an arbitration that,

- (a) deals with matters that could be dealt with in a marriage contract, separation agreement, cohabitation agreement or paternity agreement under this Part, and
- (b) is conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction; (“arbitrage familial”)

“family arbitration agreement” and “family arbitration award” have meanings that correspond to the meaning of “family arbitration”; (“convention d’arbitrage familial”, “sentence d’arbitrage familial”)

“marriage contract” means an agreement entered into under section 52; (“contrat de mariage”)

“paternity agreement” means an agreement entered into under section 59; (“accord de paternité”)

“separation agreement” means an agreement entered into under section 54. (“accord de séparation”) R.S.O. 1990, c. F.3, s. 51; 2006, c. 1, s. 5 (6, 7).

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. R.S.O. 1990, c. F.3, s. 52 (1); 2005, c. 5, s. 27 (25).

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. R.S.O. 1990, c. F.3, s. 52 (2).

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. R.S.O. 1990, c. F.3, s. 53 (1); 1999, c. 6, s. 25 (23); 2005, c. 5, s. 27 (26).

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. R.S.O. 1990, c. F.3, s. 53 (2).

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. R.S.O. 1990, c. F.3, s. 54; 1999, c. 6, s. 25 (24); 2005, c. 5, s. 27 (27).

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. R.S.O. 1990, c. F.3, s. 55 (1).

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. R.S.O. 1990, c. F.3, s. 55 (2).

Guardian, attorney

(3) If a mentally incapable person has a guardian of property or an attorney under a continuing power of attorney for property, and the guardian or attorney is not his or her spouse, the guardian or attorney may enter into a domestic contract or give any waiver or consent under this Act on the person's behalf, subject to the court's prior approval. 2009, c. 33, Sched. 2, s. 34 (4).

P.G.T.

(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). 1992, c. 32, s. 12.

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. R.S.O. 1990, c. F.3, s. 56 (1); 1997, c. 20, s. 10 (1).

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 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. 1997, c. 20, s. 10 (2); 2006, c. 1, s. 5 (8).

Clauses requiring chastity

(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. R.S.O. 1990, c. F.3, s. 56 (2).

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. R.S.O. 1990, c. F.3, s. 56 (3).

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. R.S.O. 1990, c. F.3, s. 56 (4).

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. R.S.O. 1990, c. F.3, s. 56 (5).

Idem

(6) Subsection (5) also applies to consent orders, releases, notices of discontinuance and abandonment and other written or oral arrangements. R.S.O. 1990, c. F.3, s. 56 (6).

Application of subs. (4, 5, 6)

(7) Subsections (4), (5) and (6) apply despite any agreement to the contrary. R.S.O. 1990, c. F.3, s. 56 (7).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Provisions re pension plan

Family law valuation date

56.1 (1) In this section,

“family law valuation date” means, with respect to the parties to a domestic contract,

- (a) the valuation date under Part I (Family Property) that applies in respect of the parties, or
- (b) for parties to whom Part I does not apply, the date on which they separate and there is no reasonable prospect that they will resume cohabitation. 2009, c. 11, s. 37.

Immediate transfer of lump sum

(2) A domestic contract may provide for the immediate transfer of a lump sum out of a pension plan, but, except as permitted under subsection (3), not for any other division of a party's interest in the plan. 2009, c. 11, s. 37.

Division of pension payments

(3) If payment of the first instalment of a party's pension under a pension plan is due on or before the family law valuation date, the domestic contract may provide for the division of pension payments, but not for any other division of the party's interest in the plan. 2009, c. 11, s. 37.

Restrictions re certain pension plans

(4) If the *Pension Benefits Act* applies to the pension plan, the restrictions under sections 67.3 and 67.4 of that Act apply with respect to the division of the party's interest in the plan under a domestic contract. 2009, c. 11, s. 37.

Valuation

(5) Subsections 10.1 (1) and (2) apply, with necessary modifications, with respect to the valuation of a party's interest in a pension plan. 2009, c. 11, s. 37.

Transition, family law valuation date

(6) This section applies whether the family law valuation date is before, on or after the date on which this section comes into force. 2009, c. 11, s. 37.

Transition, previous domestic contracts

(7) This section does not apply to a domestic contract that provided, before the date on which this section comes into force, for the division of a party's interest in a pension plan. 2009, c. 11, s. 37.

See: 2009, c. 11, ss. 37, 53 (2).

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. R.S.O. 1990, c. F.3, s. 57.

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. R.S.O. 1990, c. F.3, s. 58.

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 of Justice or the Family Court of the Superior Court of Justice, 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. R.S.O. 1990, c. F.3, s. 59 (1); 2006, c. 19, Sched. C, s. 1 (2, 4).

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. 1997, c. 20, s. 11.

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. R.S.O. 1990, c. F.3, s. 59 (2); 2009, c. 11, s. 38.

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. R.S.O. 1990, c. F.3, s. 59 (3).

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. R.S.O. 1990, c. F.3, s. 59 (4).

Application to existing agreements

(5) This section applies to paternity agreements that were made before the 1st day of March, 1986. R.S.O. 1990, c. F.3, s. 59 (5).

Transitional provision

(6) A paternity agreement that is made before the day section 4 of the *Family Statute Law Amendment Act, 2006* comes into force is not invalid for the reason only that it does not comply with subsection 55 (1). 2006, c. 1, s. 5 (9).

Family arbitrations, agreements and awards

59.1 (1) Family arbitrations, family arbitration agreements and family arbitration awards are governed by this Act and by the *Arbitration Act, 1991*. 2006, c. 1, s. 5 (10).

Conflict

(2) In the event of conflict between this Act and the *Arbitration Act, 1991*, this Act prevails. 2006, c. 1, s. 5 (10).

Other third-party decision-making processes in family matters

59.2 (1) When a decision about a matter described in clause (a) of the definition of “family arbitration” in section 51 is made by a third person in a process that is not conducted exclusively in accordance with the law of Ontario or of another Canadian jurisdiction,

- (a) the process is not a family arbitration; and
- (b) the decision is not a family arbitration award and has no legal effect. 2006, c. 1, s. 5 (10).

Advice

(2) Nothing in this section restricts a person’s right to obtain advice from another person. 2006, c. 1, s. 5 (10).

Contracting out

59.3 Any express or implied agreement by the parties to a family arbitration agreement to vary or exclude any of sections 59.1 to 59.7 is without effect. 2006, c. 1, s. 5 (10).

No agreement in advance of dispute

59.4 A family arbitration agreement and an award made under it are unenforceable unless the family arbitration agreement is entered into after the dispute to be arbitrated has arisen. 2006, c. 1, s. 5 (10).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Award re pension plan

Family law valuation date

59.4.1 (1) In this section,

“family law valuation date” means, with respect to the parties to an arbitration,

- (a) the valuation date under Part I (Family Property) that applies in respect of the parties, or
- (b) for parties to whom Part I does not apply, the date on which they separate and there is no reasonable prospect that they will resume cohabitation. 2009, c. 11, s. 39.

Immediate transfer of lump sum

(2) A family arbitration award may provide for the immediate transfer of a lump sum out of a pension plan, but, except as permitted under subsection (3), not for any other division of a party’s interest in the plan. 2009, c. 11, s. 39.

Division of pension payments

(3) If payment of the first instalment of a party’s pension under a pension plan is due on or before the family law valuation date, the family arbitration award may provide for the division of pension payments, but not for any other division of the party’s interest in the plan. 2009, c. 11, s. 39.

Restrictions re certain pension plans

(4) If the *Pension Benefits Act* applies to the pension plan, the restrictions under sections 67.3 and 67.4 of that Act apply with respect to the division of the party’s interest in the plan under a family arbitration award. 2009, c. 11, s. 39.

Valuation

(5) Subsections 10.1 (1) and (2) apply, with necessary modifications, with respect to the valuation of a party’s interest in a pension plan. 2009, c. 11, s. 39.

Transition, family law valuation date

(6) This section applies whether the family law valuation date is before, on or after the date on which this section comes into force. 2009, c. 11, s. 39.

Transition, previous family arbitration awards

(7) This section does not apply to a family arbitration award made before the date on which this section comes into force that requires one party to pay to the other party the amount to which that party is entitled under section 5 (equalization of net family properties). 2009, c. 11, s. 39.

See: 2009, c. 11, ss. 39, 53 (2).

59.5 REPEALED: 2009, c. 33, Sched. 2, s. 34 (5).

Conditions for enforceability

59.6 (1) A family arbitration award is enforceable only if,

- (a) the family arbitration agreement under which the award is made is made in writing and complies with any regulations made under the *Arbitration Act, 1991*;
- (b) each of the parties to the agreement receives independent legal advice before making the agreement;
- (c) the requirements of section 38 of the *Arbitration Act, 1991* are met (formal requirements, writing, reasons, delivery to parties); and
- (d) the arbitrator complies with any regulations made under the *Arbitration Act, 1991*. 2006, c. 1, s. 5 (10).

Certificate of independent legal advice

(2) When a person receives independent legal advice as described in clause (1) (b), the lawyer who provides the advice shall complete a certificate of independent legal advice, which may be in a form approved by the Attorney General. 2006, c. 1, s. 5 (10).

Secondary arbitration

59.7 (1) The following special rules apply to a secondary arbitration and to an award made as the result of a secondary arbitration:

1. Despite section 59.4, the award is not unenforceable for the sole reason that the separation agreement was entered into or the court order or earlier award was made before the dispute to be arbitrated in the secondary arbitration had arisen.
2. Despite clause 59.6 (1) (b), it is not necessary for the parties to receive independent legal advice before participating in the secondary arbitration.
3. Despite clause 59.6 (1) (c), the requirements of section 38 of the *Arbitration Act, 1991* need not be met. 2006, c. 1, s. 5 (10).

Definition

(2) In this section,

“secondary arbitration” means a family arbitration that is conducted in accordance with a separation agreement, a court order or a family arbitration award that provides for the arbitration of possible future disputes relating to the ongoing management or implementation of the agreement, order or award. 2006, c. 1, s. 5 (10).

Enforcement

59.8 (1) A party who is entitled to the enforcement of a family arbitration award may make an application to the Superior Court of Justice or the Family Court to that effect. 2006, c. 1, s. 5 (10).

Application or motion

(2) If there is already a proceeding between the parties to the family arbitration agreement, the party entitled to enforcement shall make a motion in that proceeding rather than an application. 2006, c. 1, s. 5 (10).

Notice, supporting documents

(3) The application or motion shall be made on notice to the person against whom enforcement is sought and shall be supported by,

- (a) the original award or a certified copy;
- (b) a copy of the family arbitration agreement; and
- (c) copies of the certificates of independent legal advice. 2006, c. 1, s. 5 (10).

Order

(4) If the family arbitration award satisfies the conditions set out in subsection 59.6 (1), the court shall make an order in the same terms as the award, unless,

- (a) the period for commencing an appeal or an application to set the award aside has not yet elapsed;
- (b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity; or

(c) the award has been set aside or the arbitration is the subject of a declaration of invalidity. 2006, c. 1, s. 5 (10).

Pending proceeding

(5) If clause (4) (a) or (b) applies, the court may,

(a) make an order in the same terms as the award; or

(b) order, on such conditions as are just, that enforcement of the award is stayed until the period has elapsed without an appeal or application being commenced or until the pending proceeding is finally disposed of. 2006, c. 1, s. 5 (10).

Unusual remedies

(6) If the family arbitration award gives a remedy that the court does not have jurisdiction to grant or would not grant in a proceeding based on similar circumstances, the court may,

(a) make an order granting a different remedy, if the applicant requests it; or

(b) remit the award to the arbitrator with the court's opinion, in which case the arbitrator may award a different remedy. 2006, c. 1, s. 5 (10).

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. R.S.O. 1990, c. F.3, s. 60 (1).

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. R.S.O. 1990, c. F.3, s. 60 (2).

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. R.S.O. 1990, c. F.3, s. 60 (3).

**PART V
DEPENDANTS' CLAIM FOR DAMAGES**

Right of dependants to sue in tort

61. (1) If a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part III (Support Obligations), children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction. R.S.O. 1990, c. F.3, s. 61 (1); 1999, c. 6, s. 25 (25); 2005, c. 5, s. 27 (28).

Damages in case of injury

(2) The damages recoverable in a claim under subsection (1) may include,

(a) actual expenses reasonably incurred for the benefit of the person injured or killed;

(b) actual funeral expenses reasonably incurred;

(c) a reasonable allowance for travel expenses actually incurred in visiting the person during his or her treatment or recovery;

(d) where, as a result of the injury, the claimant provides nursing, housekeeping or other services for the person, a reasonable allowance for loss of income or the value of the services; and

(e) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the person if the injury or death had not occurred. R.S.O. 1990, c. F.3, s. 61 (2).

Contributory negligence

(3) In an action under subsection (1), the right to damages is subject to any apportionment of damages due to contributory fault or neglect of the person who was injured or killed. R.S.O. 1990, c. F.3, s. 61 (3).

(4) REPEALED: 2002, c. 24, Sched. B, s. 25.

Offer to settle for global sum

62. (1) The defendant may make an offer to settle for one sum of money as compensation for his or her fault or neglect to all plaintiffs, without specifying the shares into which it is to be divided. R.S.O. 1990, c. F.3, s. 62 (1).

Apportionment

(2) If the offer is accepted and the compensation has not been otherwise apportioned, the court may, on motion, apportion it among the plaintiffs. R.S.O. 1990, c. F.3, s. 62 (2).

Payment before apportionment

(3) The court may direct payment from the fund before apportionment. R.S.O. 1990, c. F.3, s. 62 (3).

Payment may be postponed

(4) The court may postpone the distribution of money to which minors are entitled. R.S.O. 1990, c. F.3, s. 62 (4).

Assessment of damages, insurance

63. In assessing damages in an action brought under this Part, the court shall not take into account any sum paid or payable as a result of the death or injury under a contract of insurance. R.S.O. 1990, c. F.3, s. 63.

**PART VI
AMENDMENTS TO THE COMMON LAW**

Unity of legal personality abolished

64. (1) For all purposes of the law of Ontario, a married person has a legal personality that is independent, separate and distinct from that of his or her spouse. R.S.O. 1990, c. F.3, s. 64 (1).

Capacity of married person

(2) A married person has and shall be accorded legal capacity for all purposes and in all respects as if he or she were an unmarried person and, in particular, has the same right of action in tort against his or her spouse as if they were not married. R.S.O. 1990, c. F.3, s. 64 (2).

Purpose of subss. (1, 2)

(3) The purpose of subsections (1) and (2) is to make the same law apply, and apply equally, to married men and married women and to remove any difference in it resulting from any common law rule or doctrine. R.S.O. 1990, c. F.3, s. 64 (3).

Actions between parent and child

65. No person is disentitled from bringing an action or other proceeding against another for the reason only that they are parent and child. R.S.O. 1990, c. F.3, s. 65.

Recovery for prenatal injuries

66. No person is disentitled from recovering damages in respect of injuries for the reason only that the injuries were incurred before his or her birth. R.S.O. 1990, c. F.3, s. 66.

Domicile of minor

67. The domicile of a person who is a minor is,

- (a) if the minor habitually resides with both parents and the parents have a common domicile, that domicile;
- (b) if the minor habitually resides with one parent only, that parent's domicile;
- (c) if the minor resides with another person who has lawful custody of him or her, that person's domicile; or
- (d) if the minor's domicile cannot be determined under clause (a), (b) or (c), the jurisdiction with which the minor has the closest connection. R.S.O. 1990, c. F.3, s. 67.

68. REPEALED: 2000, c. 4, s. 12.

GENERAL

Regulations

69. (1) The Lieutenant Governor in Council may make regulations respecting any matter referred to as prescribed by the regulations. R.S.O. 1990, c. F.3, s. 69.

Same

- (2) The Lieutenant Governor in Council may make regulations establishing,
- (a) guidelines respecting the making of orders for child support under this Act; and
 - (b) guidelines that may be designated under subsection 2 (5) of the *Divorce Act* (Canada). 1997, c. 20, s. 12.

Same

- (3) Without limiting the generality of subsection (2), guidelines may be established under subsection (2),
- (a) respecting the way in which the amount of an order for child support is to be determined;
 - (b) respecting the circumstances in which discretion may be exercised in the making of an order for child support;
 - (c) respecting the circumstances that give rise to the making of a variation order in respect of an order for the support of a child;
 - (d) respecting the determination of income for the purposes of the application of the guidelines;
 - (e) authorizing a court to impute income for the purposes of the application of the guidelines;
 - (f) respecting the production of income information and providing for sanctions when that information is not provided. 1997, c. 20, s. 12.

Same

(4) The Lieutenant Governor in Council may make regulations respecting the production of information, including income information, relating to child support obligations created by domestic contracts or by written agreements that are not domestic contracts, and providing for enforcement procedures when that information is not provided. 2009, c. 11, s. 40 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 69 is amended by adding the following subsection:

Same

(5) The Lieutenant Governor in Council may make regulations governing the recalculation of the amount payable for the support of a child for the purposes of section 39.1, including regulations,

- (a) establishing a child support service, governing its structure and prescribing its powers, duties and functions;
- (b) governing procedures respecting the recalculation of child support amounts;
- (c) governing the recalculation of child support amounts by the child support service;
- (d) providing for review or appeal processes respecting recalculated child support amounts;
- (e) excluding specified classes of provisions for child support from recalculation. 2009, c. 11, s. 40 (2).

See: 2009, c. 11, ss. 40 (2), 53 (2).

Transition

Application of ss. 5-8

- 70.** (1) Sections 5 to 8 apply unless,
- (a) an application under section 4 of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980 was adjudicated or settled before the 4th day of June, 1985; or
 - (b) the first spouse's death occurred before the 1st day of March, 1986. R.S.O. 1990, c. F.3, s. 70 (1).

Application of Part II

(2) Part II (Matrimonial Home) applies unless a proceeding under Part III of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980 to determine the rights between spouses in respect of the property concerned was adjudicated or settled before the 4th day of June, 1985. R.S.O. 1990, c. F.3, s. 70 (2).

Interpretation of existing contracts

(3) A separation agreement or marriage contract that was validly made before the 1st day of March, 1986 and that excludes a spouse's property from the application of sections 4 and 8 of the *Family Law Reform Act*, being chapter 152 of the Revised Statutes of Ontario, 1980,

- (a) shall be deemed to exclude that property from the application of section 5 of this Act; and
- (b) shall be read with necessary modifications. R.S.O. 1990, c. F.3, s. 70 (3).

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