

# Love and Legality: Understanding Ontario's Family Law

July 2023

Marriage contracts and cohabitation agreements may not be the most romantic topics when it comes to weddings or long-term partnerships, but they play a crucial role in safeguarding yourself, your property and your financial affairs in the unfortunate event of a breakup or divorce.

Recently, Guardian Capital Advisors LP and Guardian Partners Inc. hosted a session with Margaret O'Sullivan, Stephanie Battista and Marly Peikes from O'Sullivan Estate Lawyers, where they shed light on the subject – here are our four key takeaways:

## 1. The Family Law Act: a one-size-fits-all approach

Marriage and divorce broadly fall under federal jurisdiction, but matrimonial property is under provincial jurisdiction – in Ontario, the Family Law Act governs this.

The Family Law Act serves as the default framework regulating all married couples' property rights in Ontario. It provides sufficient protection for couples willing to share their assets equally, particularly those with limited or no assets at the beginning of the marriage.

## 2. The goal of the Family Law Act? Equalization

The primary goal of the property regime under the Family Law Act is to recognize marriage as an equal economic partnership and, in the case of marriage breakdown, to ensure an equitable division of the assets acquired during the marriage.

Certain exclusions apply when determining the value of the couple's assets, such as gifts and inheritances (plus any income or growth resulting from them if the Deed of Gift or Will provides so) and life insurance proceeds received after the marriage date.

Another important consideration is that the value of a matrimonial home is subject to equalization under the Family Law Act, including primary residences and cottages, even though inherited or gifted during the marriage.

In cases of separation, the spouse with the lower net family property can claim against the spouse with a higher net family property to equalize their assets.

## 3. Does the Family Law Act not fit your needs? Tailor it with a domestic contract

In recognizing that a one-size-fits-all approach may not suit everyone, the value of a domestic contract comes into focus. These contracts, which include marriage contracts and cohabitation agreements, allow individuals to customize their property regime according to their specific needs.

Domestic contracts allow parties to opt out of certain aspects of the regime and tailor the law to their circumstances, including how they would like to manage property rights and division, support obligations and other related matters in the event of separation or death. This level of customization is especially beneficial for individuals who have acquired significant assets prior to marriage or in a second marriage where a couple wishes to protect their assets for children from a prior marriage.

#### **4. Domestic contracts are not a catch-all**

It is important to note that prearranging child decision-making responsibilities and parenting time arrangements through a marriage contract or cohabitation agreement is not permitted. These matters are best determined based on the circumstances during separation under a separation agreement.

Certain decisions with respect to possession of the matrimonial home(s) are also unable to be contracted for. For example, you cannot put into the contract that an ex-spouse be evicted on a marriage breakdown.

--

Ultimately, whether it's the Family Law Act providing a framework for equal division or choosing to recognize your unique circumstances with the flexibility of a domestic contract, these agreements are crucial tools for protecting yourself.

Thank you to the experts at O'Sullivan Estate Lawyers for helping us better understand the intricacies of the Family Law Act and the options provided by domestic contracts and guiding us toward making informed decisions about our assets!

---

This material is intended solely for information purposes, does not constitute investment advice, is not a recommendation or an offer or solicitation to buy or sell any security or instrument or participate in any trading strategy. The material is not intended for distribution to, or to be used by, any person or entity in any jurisdiction or country in which distribution or use would be contrary to law or regulation. The statements and opinions expressed are as of the date hereof (unless otherwise indicated) and are subject to change as market and economic conditions dictate. Effort has been made to ensure that the material presented is accurate at the time of publication.

Guardian Capital Advisors LP is a subsidiary of Guardian Partners Inc. and Guardian Partners Inc. is a wholly owned subsidiary of Guardian Capital Group Limited, a publicly traded firm listed on the Toronto Stock Exchange. For further information on Guardian Capital Advisors LP, please visit <https://www.guardiancapital.com/private-wealth-management> and for Guardian Partners Inc., please visit <https://www.guardiancapital.com/gpi>. All trademarks, registered and unregistered, are owned by Guardian Capital Group Limited and are used under license.