

Ontario Family Law

The new Family Law Act came into force in Ontario on March 1, 1986. However, it is retroactive to June 4, 1985. The act deals with the division of property upon marriage breakdown and support.

FAMILY PROPERTY

This new provision of "net family property" creates a community of property concept which most people feared that the old law used to do. The old act referred to "family assets" to be shared equally and other assets to be shared by proof of contribution. This part of the act is concerned with the rights of a spouse (either a man or a woman) legally married to the other.

1. Dissolution of Marriage

Every marriage will eventually dissolve:

- by final physical separation, or
- by divorce (or declaration of nullity), or
- by death

Until marriage dissolves (except when selling a matrimonial home), there is no problem with the legislation.

2. Valuation of Property

On dissolution, the property of each spouse will be evaluated as of **the day**

- of the separation, or
- of the decree of divorce (or declaration of nullity), or
- the day before the death

whichever is earliest.

3. Financial Entitlement

The spouse (or surviving spouse) whose property is the lesser of the two is entitled to be paid one-half the difference between the two, **if claimed,**

- within six years of the date of the final separation, or
- within two years after the judgment in divorce or nullity, or
- within six months after the death.

4. Immediate Relief

Where one spouse is "improvidently depleting" assets, the other spouse can seek immediate relief.

Ralph
Winslade



5. Terms of Payment

The court can delay the payment of the amount owing for up to 10 years and "no order shall be made requiring sale of an operating business or farm, or seriously impairing its operation... unless there is no reasonable alternative method of satisfying the entitlement."

6. Property Excluded

The property of each spouse "called net family property" does not include:

- property brought to the marriage by one spouse
- property acquired by gift or inheritance from a third party after the marriage
- the income from that property if the giver of the property has specifically excluded it.
- damages collected for personal injury
- life insurance proceeds
- property (other than matrimonial home) into which any of the above four kinds of property can actually be traced.

7. Property Included

The property of each spouse, called "net family property", generally means the net value of all property bought during marriage, any gain, during the marriage on property brought to the marriage by one of the spouses. Examples include pension plans, debts owing to one of the spouses, livestock, crops, farm implements, automotive equipment, stocks and bonds, land and buildings, interest in partnerships, and shares in corporations. The only deduction made is for **debts** against property when entering and leaving marriage.

8. Marriage Contracts can be used to contract out of the provisions of the act. It is really a type of partnership

agreement that indicates how the "net family property" will be divided upon a marriage break down. It can also be considered a separation agreement established at the time of entering instead of leaving a marriage. The marriage contract is fairly common in second marriages. Each spouse is keen to be sure that his or her family receives its entitlement should the marriage end. Some farmers are starting to insist on a marriage contract when their child, who is part of the farm business, gets married.

Remember that someone who is forced into a contract may refuse or may contest the contract later on.

9. Death

In the case of death, the surviving spouse must decide to accept the terms of the will and proceeds from life insurance policies **OR** within six months claim under the provisions of the act. In most cases, everything is left to the surviving spouse anyway so these is no problem. A life insurance company may require a beneficiary spouse to sign a form indicating that he/she will not claim under the act before proceeds are released.

AREAS OF CONCERN

The new act is causing concern in a number of areas.

1. Spousal Partnership

Many are unwritten and confusing as to who owns what. If knowing provides any peace of mind, a written agreement is preferred. It is also important evidence for tax purposes that a partnership actually exists. If the partnership refers to the breakdown of marriage it may be a type of marriage contract regarding the ownership of the partnership.

2. Wills and Estate Planning

When one spouse has adequate resources the other spouse may direct assets directly to children. The surviving spouse may claim under the law rather than abiding with the will. A marriage contract would help to