



Unmarried people make own arrangements

By Judith Keene, LL.B.
The Ontario Family Law Reform Act says that spouses are obliged to support each other (and their children), if they are able to do so, and if the dependant spouse or child needs support.

Who is a "spouse"? Our last article discussed the law that governs the division of property when a married couple separates. Only a married spouse has a legal right to an equal share of "family property". Unmarried people who live as spouses must make their own arrangements. The property of unmarried spouses belongs to the spouse who bought it, unless the other spouse can convince a court that he or she is entitled to a share.

It is different when it comes to support. Sometimes, unmarried spouses can get support from each other. However, there are rules about this. To qualify for support as an unmarried spouse, you must apply to court within one year of your separation, and you must convince the court that you either lived together for at least five years, or you had a permanent relationship and that the two of you are the parents of a child.

When will a court award a spouse support from the other spouse? This depends on two things: the need of the spouse applying, and the ability of the other spouse to pay. Spouses are expected to support themselves to the best of their ability, and the court will look at just why the spouse applying for support needs the money. Often, the spouse is a mother with small children, or a woman who has been a full-time homemaker for many years. A court will recognize that it is not easy for these people to get jobs.

When looking at the ability of the other spouse to pay, the court recognizes that he or she may have a new spouse and family to look after. However, taking on new family responsibilities does not mean that the previous spouse and family can be forgotten.

How much support will a court order? This will depend on many different factors that the judge must consider, including the age and health of both spouses, child care needs, and the length of the relationship. Also, the courts often assume that if a spouse is living with someone else, that person is contributing to the spouse's support.

Everyone knows

"horror stories" about spouses who won't fulfill their support responsibilities. Sometimes, families are forced to go on welfare because of continuing defaults.

There are a number of legal ways that can be used to force a spouse to pay support. Garnishment (an order to someone who owes money to the spouse to pay all or part into court for the other spouse) and attachment (an order that money owing in the future must be paid into court) are two ways available to the court. However, there have been problems that

the Family Law Reform Act has not solved.

For example, some sources of income are immune from attachment. These include some pension plans and compensation payments, and professional fees paid to doctors and lawyers to OHIP or the Ontario Legal Aid Plan. Also, while a defaulting spouse can be jailed for contempt of court, the court cannot do this until "all other practicable means for enforcing payment have been considered". Courts often see jail as a last resort for an irresponsible spouse, and, by

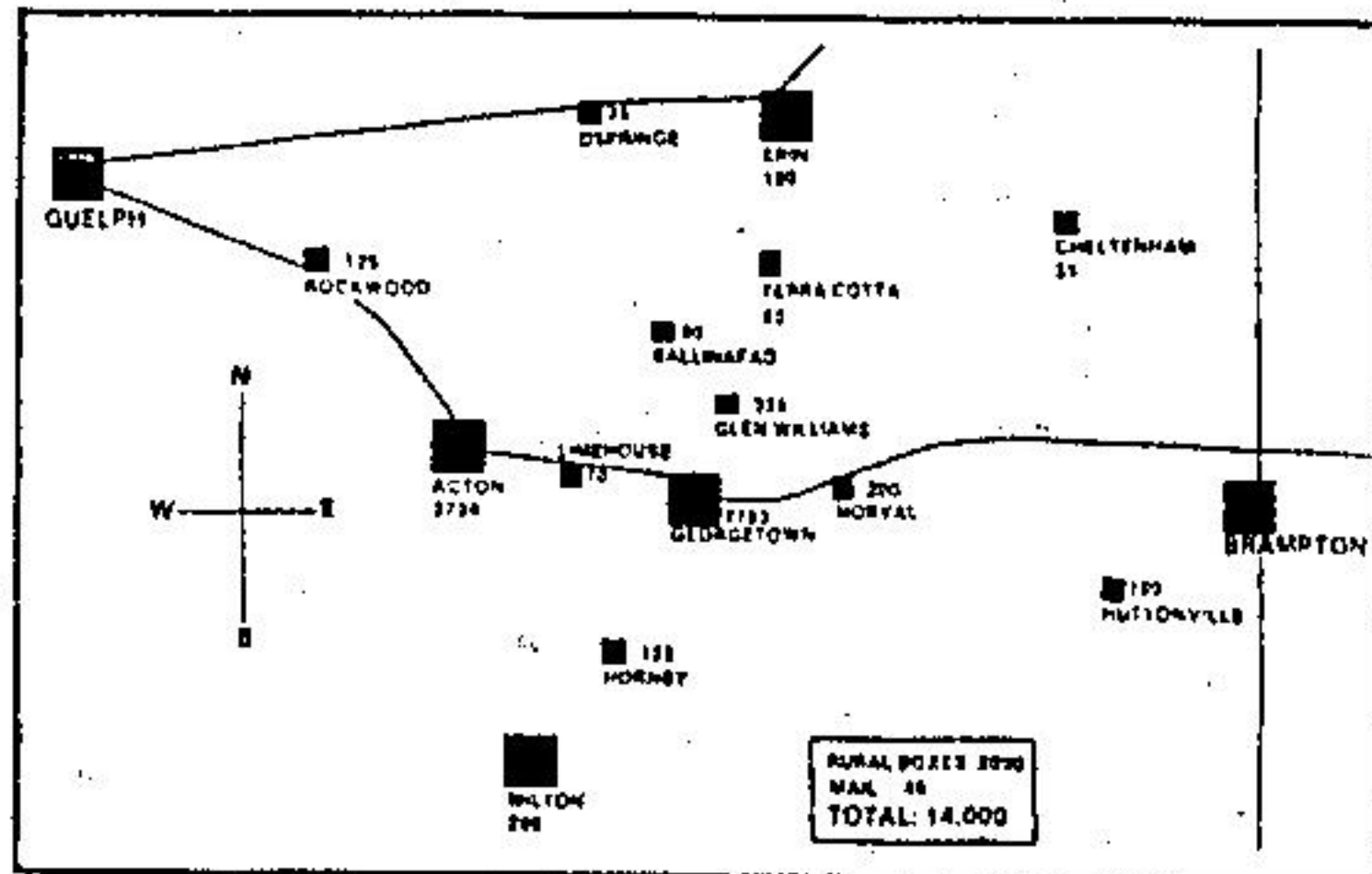
the time this type of order is considered, arrears of support are often too high for a spouse ever to pay in full.

If you consider the present Family Law Reform Act to be fair (or unfair) in regard to its support rules, now is the time to make your opinion known to your M.P.P., or to the Attorney General of Ontario. The Ontario Legislature will be considering whether to change the Family Law Reform Act in the near future.

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