



flew Family Law
Education for Women
Women's Right to Know

fodf Femmes ontariennes et
droit de la famille
Le droit de la femme à savoir

***Updated:* Property Rights and Obligations of Married and Co-habiting Partners**

March 6, 2013

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METRAC

METRAC, the **Metropolitan Action Committee on Violence Against Women and Children**

- works to end violence against women, youth and children
- a not-for-profit, community-based organization

www.metrac.org

METRAC's **Community Justice Program**

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

FLEW, **Family Law Education for Women** in Ontario

- provides information on women's rights and options under Ontario family law
- in 14 languages, accessible formats, online and in print

www.onefamilylaw.ca
www.undroitdefamille.ca

Presenters

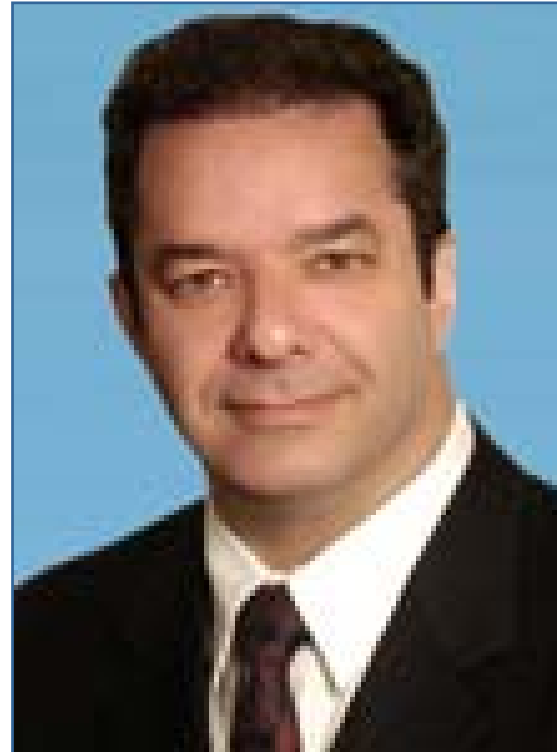
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Topics to be Covered

1. Introduction – Division of Family Property in Ontario
2. Equalization Payment
3. The Matrimonial Home
4. Family Property for Surviving Spouses
5. Common Law or Co-Habiting Partners
6. Division of Property vs Spousal Support
7. Additional Resources

Information is accurate as of March 6, 2013



Introduction: Division of Family Property

Division of Family Property in Ontario

- Ontario *Family Law Act*, R.S.O. 1990, CHAPTER F.3
- applies to married spouses, both opposite and same sex
- guiding principles:
 - marriage is an equal partnership
 - assumes each spouse contributes equally to household, child, and financial responsibilities
- result: each spouse entitled to equal share of growth of couple's net worth, between wedding and separation date



Division of Family Property in Ontario

Each spouse will determine:

- Assets and debts on the date of marriage
- Assets and debts on the date of separation
- Calculated for husband and wife separately



Equalization Payment

Equalization Payment

- The payment from one spouse to another at marriage breakdown to divide assets from marriage equally
- applies to the increase in couple's property that occurred during the marriage
- deducted from calculation:
 - property that each spouse owned on the date of marriage
 - Property is minus debts
 - Matrimonial home is not deducted
- excluded from calculation:
 - gifts that each spouse personally received during the marriage
 - Matrimonial Home is not excluded

Equalization Payment

The Calculation

- calculate Net Family Property for each spouse: total assets minus total debts for each spouse at end of marriage
- asset examples:
 - pension, RRSP, business, real estate (land, cottage, rental property), savings, home furnishings, cars
- debt examples:
 - mortgage, bank loans, car loans, credit card balances, unpaid income taxes or property taxes

Equalization Payment

The Calculation

- Spouse 1 (higher Net Family Property) minus Spouse 2 (lower Net Family Property)
- divide the difference by two
- Spouse 1 pays half the difference to Spouse 2

Example

	Spouse 1 (\$80,000)
minus	<u>Spouse 2 (\$60,000)</u>
	\$20,000 divided by 2 = \$10,000

Spouse 1 pays \$10,000 to Spouse 2

Equalization Payment

Other issues:

- Domestic Contracts
 - spouses can agree to exclude specific property from the equalization calculation

- Violence or abuse
 - get legal advice before signing any agreement about division of family property

Presenters

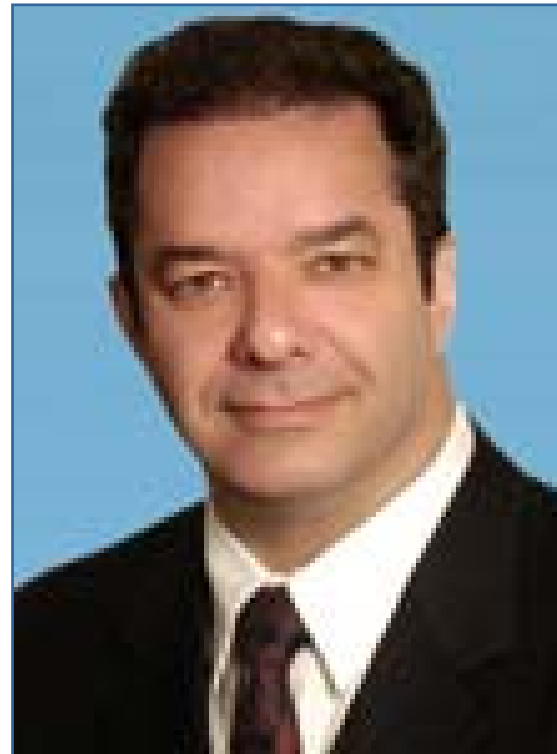
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The Matrimonial Home

The Matrimonial Home

- The “Matrimonial Home” is the home ordinarily occupied by the spouses as the family residence at the time of separation
- there are special rules for the Matrimonial Home in the equalization calculation



The Matrimonial Home

Equalization Payment calculation:

- the value of the Matrimonial Home at separation must be included in the calculation of the Equalization Payment
- the Matrimonial Home is included in the property calculation of the spouse whose name is on the deed

The Matrimonial Home

Equalization Payment calculation:

- if the Matrimonial Home was owned by one spouse at the wedding date (i.e. before the marriage), it is not deducted from that spouse's Net Family Property
- if the Matrimonial Home was a gift to one of the spouses during the marriage, it is not excluded from that spouse's Net Family Property

The Matrimonial Home

After separation, both spouses have the right to live in the Matrimonial Home:

- unless and until there is an agreement or Court Order to the contrary
- locks cannot be changed by one party without an agreement or Court Order to the contrary
- property cannot be sold without both spouses' agreement



Family Property for Surviving Spouses

Family Property for Surviving Spouses

- if wife or husband dies before her/his spouse, the surviving spouse has a choice regarding family property:
 1. if there is a will, accept the bequest of property according to the will, OR
 2. if there isn't a will, accept the assignment of property according to the rules for intestacy (no will), OR
 3. choose division of property according to the equalization calculation
- if surviving spouse chooses division of property by equalization calculation (#3), that takes priority over will or intestacy rules



Presenters

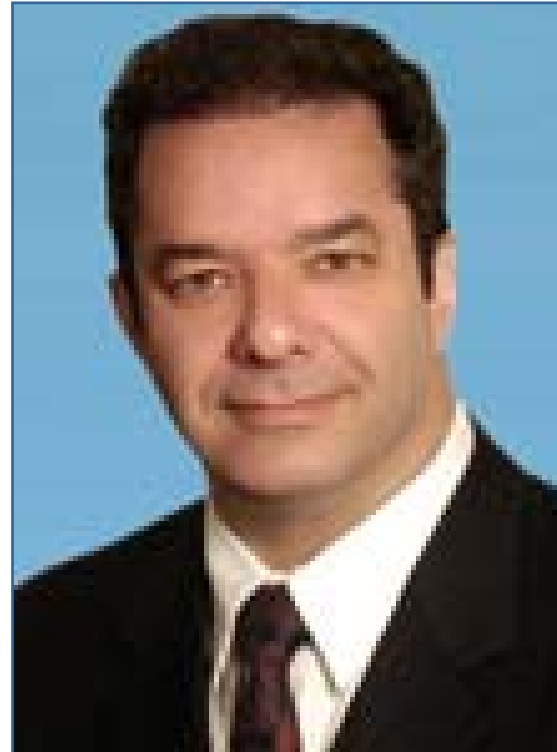
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Common Law or Co-Habiting Partners

Common Law or Co-Habiting Partners

- The Ontario *Family Law Act* rules for division of property do not apply to common law or cohabiting partners
- Courts have made rules for the division of property between unmarried partners who are separating
- Factors the court considers:
 - length of relationship
 - was there a “joint family venture”
 - integrated finances
 - cooperation in running the household
 - cooperation raising children
 - leaving school or workforce for family
 - moving for one partner’s career
- The Court may order:
 - One partner pays money to the other
 - divided ownership of some family property between partners



Division of Property vs Spousal Support

Division of Property vs Spousal Support

- The *Family Law Act* does apply to common law partners for spousal support
- In Ontario, “common law” for support purposes is defined as partners who:
 - lived together for at least three years, or
 - have a child together and lived together in a relationship of some permanence
- See webinar: *Financial Support After Breakup: What Women Should Know About Spousal and Child Support*
<http://yourlegalrights.on.ca/webinar/84848>

Division of Property vs Spousal Support

Supreme Court of Canada has ruled:

- Legislation that excludes unmarried partners from spousal support and division of property rules does not violate the Canadian *Charter of Rights and Freedoms*

(Quebec (Attorney General) v. A [Eric v. Lola], 2013 SCC 5; Walsh v. Bona, 2002 SCC 83)

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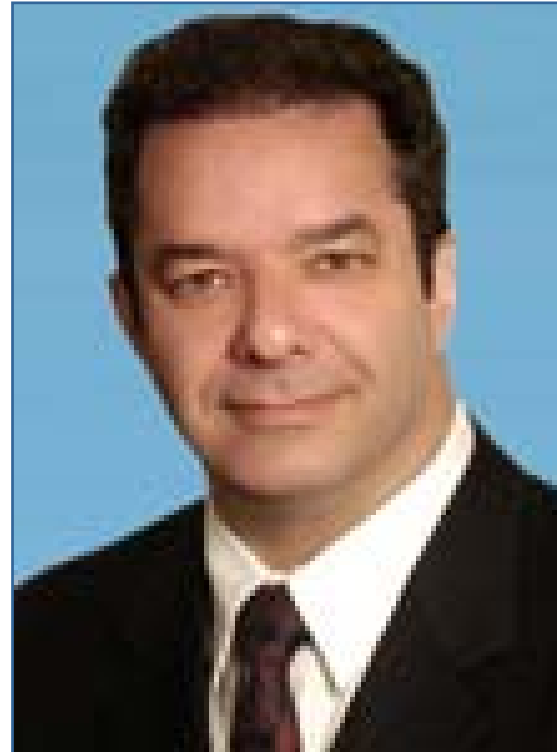
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Additional Resources

Additional Resources (Family)

Legal Aid Ontario

<http://www.legalaid.on.ca/en/getting/default.asp>

- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867
- Toronto: 416-979-1446 (accepts collect calls)

Family Law Information Centres (FLICs)

http://www.legalaid.on.ca/en/getting/type_family.asp

Family Law Services Centres (FLSCs)

<http://www.legalaid.on.ca/en/contact/contact.asp?type=flsc>

Family Law Education for Women (FLEW)

<http://www.onefamilylaw.ca/en/resources/>

Femmes ontariennes et droit de la familles (FODF)

<http://undroitdefamille.ca/>

Ontario Women's Justice Network (OWJN)

www.owjn.org

Additional Resources (General)

Law Society of Upper Canada Lawyer Referral Service

<http://www.lsuc.on.ca/with.aspx?id=697>

- Toll-free: 1-800-268-8326
- Toronto: 416-947-3330
- TTY: 416-644-4886

Toolkit for a good Client-Lawyer Relationship

<http://schliferclinic.com/vars/legal/pblo/toolkit.htm>

- Barbra Schlifer Commemorative Clinic

Ministry of the Attorney General

<http://www.attorneygeneral.jus.gov.on.ca/english/>

- Toll free: 1-800-518-7901
- TTY: 1-877-425-0575

Find a community legal clinic near you

<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>

211 Canada.ca

<http://211canada.ca/>

Additional Resources (General)

Online forms

<http://www.ontariocourtforms.on.ca/english/family/>

Ontario Court Forms Assistant

<https://formsassistant.ontariocourtforms.on.ca/Welcome.aspx?lang=en>

- Get help online to complete family court forms

Ontario Courts

<http://www.ontariocourts.on.ca/>

- Online guide provides an overview of all courts in Ontario
- Information on family courts:
 - Superior Court of Justice <http://www.ontariocourts.ca/scj/en/famct/>
 - Ontario Court of Justice <http://www.ontariocourts.ca/ocj/family-court/overview/>

Ontario Court Locations

http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/

- Find court addresses across Ontario

Domestic Violence and Abuse

For information, if your partner is abusive or violent:

Assaulted Women's Helpline <http://www.awhl.org/>

- 24 hours/7 days; multiple languages
- Toll-free: 1-866-863-0511; TTY: 1-866-863-7868

Legal Aid Ontario http://www.legalaid.on.ca/en/getting/type_domesticviolence.asp

- Available to every immigration status
- Free telephone interpretation services for languages other than English and French
- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867

Family Violence Authorization Program (Legal Aid Ontario)

- Free 2-hour emergency meeting with a lawyer
- Offered through some shelters and community legal clinics
- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867

FLEW (Family Law Education for Women) Resources page

<http://www.onefamilylaw.ca/en/resources/>