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Family law in Canada: marriage agreements

If you are considering getting married in Canada, there are a few legal considerations that you should know to address. The law deals with the formal requirements of contracting a valid marriage, licensing of clergy, marriage licenses, age requirements, parental consent requirements, dispensing with consent and penalties for non-compliance. The law also determines marriage restrictions.

Foreign marriages may be recognized in a particular jurisdiction depending on laws of legislation. There may be instances where a foreign marriage will not be recognized (i.e., polygamous marriage).

Some people may marry a citizen of Canada to gain admission to the country. These so-called "marriages of convenience" may have implications for both family law and immigration law. Generally, courts consider these marriages valid on the basis that the bride and groom, at the time of the ceremony, appreciate the nature and quality of the act. This, however, does not mean that the immigration requirements are met. For more information on immigration requirements, visit the Government of Canada's website.

Marriage contracts

When entering into a marriage, the bride and groom may wish to sign an agreement detailing how assets will be divided if the marriage breaks down. Marriage contracts, often referred to as pre-nuptial agreements, can be drafted and signed before the marriage or during the course of a marriage. Depending on the jurisdiction, formal requirements may need to be met (i.e. agreement in writing, signatures, witnesses) before the contract is valid. A marriage contract can deal with each person's obligations in the marriage, upon separation, annulment or divorce, or division of assets when one spouse dies.

These types of contracts generally deal with property, and assets and don't usually tackle questions of future custody, access and support obligations. These items are a determination of courts and any contract provisions relating to them may be void as being contrary to public policy. The court may consider the terms of the marriage contract when determining spousal maintenance, in the event of a marriage breakdown. It's a good idea to have a lawyer help you draft the marriage contract.

Family law has very important implications for spouses and their children before, during and after the marital relationship. There is no substitute for sound legal advice concerning legal matters with respect to the marital relationship, and they should not be dealt with without the advice of a lawyer with specific knowledge of family law.

There are numerous sources of information in each province, both in terms of counselling and information concerning legal matters. Gather as much information as possible about the process and issues so that you can avoid disagreements and expense.

Before seeking a legal remedy, particularly in the case of a relationship, you may wish to consider other avenues and discuss the issue with a family counsellor, social worker, doctor or health professional.

Please note, this article is a general guide to certain laws applicable to family law in Canada. The information contained in this publication is given by way of general reference only, is not intended to provide legal advice, and is not to be relied upon in any factual situation as it does not cover all laws or regulations that may be applicable in all circumstances. No responsibility will be accepted by the authors or publishers for any inaccuracy, omission or statement which might prove to be misleading. You are advised to seek your own professional advice before proceeding to consider issues of family law in Canada.

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