



## **IAFL Introduction to European Family Law Conference**

### **Friday 12 June 2026**

#### **15:15 – 16:15 Jurisdictional Differences**

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Richard is a Partner at Bales Beall LLP practicing in the area of family law. Much of his practice involves matters with an international focus involving both Ontarian and foreign jurisdictions. His practice focuses heavily on the resolution of disputes through negotiation and alternative methods of resolution. His versatility and experience allow him to effectively provide advice to clients on matters surrounding separation and divorce, custody, visitation, child support, spousal support and the division of marital property.

**Practice Areas:** Appeals, Arbitration, Child Custody/Residence/Visitation/Contact, Child Support, Cohabitation, Divorce, Domestic Abuse/Violence/Protection Orders, Emergency Procedures/Injunctions, Enforcement: Child Custody, Enforcement: Child Support, Enforcement: Property Division, Enforcement: Spousal Support, Finance: Pensions/Superannuation/Retirement and Employment Benefits, Finance: Property Issues, Finance: Taxation, Finance: Trusts, Hague Convention/Child Abduction, Mediation, Modification/Variation: Child Custody, Modification/Variation: Child Support, Modification/Variation: Property Division, Modification/Variation: Spousal Support, Parentage/Paternity, Pre-nuptial/Post-nuptial Agreements, Relocation/Removal from Jurisdiction, Same Sex Partnerships, Spousal Support/Maintenance/Alimony

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Karon C. Bales is a founding partner of Bales Beall LLP whose experience speaks for itself. Her practice is centred on family law, wills and estates issues. Her experience in trial and appellate advocacy in family law and estate matters is extensive, particularly with those involving partnerships, business corporations and commercial issues.

Karon also provides sound guidance with estate administration and planning, domestic and off-shore trusts, and succession planning for owners of family businesses. Her expertise also extends to mediations, as she has been conducting private mediations for over 10 years in the areas of family law and estate litigation – most often in cases where those two areas of the law intersect.

Bales Beall LLP has been listed in the top Wills, Trust and Estates Boutique Firms in Canada since 2017 by Canadian Lawyer Magazine.

Karon was honoured to be selected as the 2026 recipient of the Ontario Bar Association's Award of Excellence in Trusts and Estates.

Karon is certified by the Law Society of Ontario as a Specialist in Estates and Trusts Law and in Family Law. She is a member of the Society of Trust and Estate Practitioners, is a Fellow of the International Academy of Family Lawyers (IAFL) and an Academician of the International Academy of Estate and Trust Law. She is a Past President of the IAFL Canadian Chapter. Karon has served as an Adjunct Professor at the University of Toronto Law School. She has been listed in Best Lawyers – Canada since 2006 and in Chambers and Partners Guide for Canada for Family/Matrimonial: High Net Worth and Private Wealth Disputes since 2022.

Karon's articles on the intersection of family law and estates issues have been published in the *Estates, Trusts and Pensions Journal* and in the *Ontario Family Law Reporter*.

Karon has been involved in many community charities, including as a Governor of the Stratford Festival of Canada, Director and past Chair of the Board of the Seeing Eye Organization (Canada), former Trustee of the Seeing Eye Inc., and as past Chair of Nightwood Theatre, which promotes Canadian women in contemporary theatre.

## **RACHAEL KELSEY**

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Rachael is Immediate Past President of the IAFL - the first Scot and the only woman from the UK in the thirty-nine year history of the Academy. She is a founding Partner of SKO Family Law Specialists, which is the largest niche family practice in Scotland. She is the only 'Star Individual' in Scotland in Chambers and Partners and the only Scottish lawyer in Band 1 of the UK-wide HNW Guide. She was the recipient of the 'Private Client Lawyer of the Year 2023' Award at the Legal 500 Scottish Law Awards, from a shortlist of ten lawyers including tax, rural property and family law specialists.

Rachael currently sits on the Family Law Committee of the Scottish Civil Justice Council, having been appointed by the Lord President to sit for a third term, and is the only Scot to sit on the UK Ministry of Justice International Family Law Committee. She splits her time between Edinburgh and London.

## HEATHER Q. HOSTETTER

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Heather is the President of the IAFL, having previously served as Treasurer, and Assistant Treasurer. She began to practice solely family law in 2000, after spending several years as an Assistant Public Defender (criminal law) in Maryland. Heather currently practices in Maryland and D.C. and has been recognized many times for her work in family law. She is an active participant as a member, leader, and lecturer in many organizations. She graduated from Boston University, simultaneously earning a BA in Political Science *summa cum laude*, and a JD in 1995. Professor Silbaugh was her family law professor at B.U.



Ian Solloway is one of Montreal’s most respected family law practitioners, recognized for his leadership in complex family litigation, his influence on legal reform, and his longstanding service to the legal community in Quebec and internationally.

A member of the Quebec Bar since 1975, Me Solloway holds both a B.A. (Honours) in Political Science and a B.C.L. from McGill University. Early in his career, he worked in the Office of Prime Minister Pierre Elliott Trudeau before beginning his legal practice in Montreal.

For more than four decades, Me Solloway has focused exclusively on family law, representing clients in sophisticated domestic and international matters involving divorce, parenting disputes, mobility and relocation cases, international child abduction, support claims, high-net-worth property issues, marriage contracts, and cross-border jurisdictional disputes. He is particularly recognized for his strategic, resolution-focused approach in high-conflict and high-stakes family litigation.

In 1990, he was inducted as a Fellow of the International Academy of Family Lawyers, an internationally recognized organization of leading family law specialists. He has also taught family law at the university level, lectured extensively across Canada, and frequently contributes commentary in the media on evolving family law issues.

Me Solloway has played a meaningful role in shaping modern family law in Canada. In 1998, he appeared before the Special Joint Committee of the Senate and House of Commons on Child Custody and Access, advocating for reforms that included replacing the terminology of “custody” and “access” with “parenting time” and giving greater weight to domestic violence considerations in parenting decisions — reforms later reflected in the 2021 amendments to Canada’s Divorce Act.

Beyond his legal practice, Me Solloway has held numerous leadership positions within the profession, including serving as President of the English-Speaking Section of the Bar of Montreal for eight consecutive terms. He was instrumental in revitalizing the Section and expanding English-language professional programming within the Quebec legal community.

His contributions have been widely recognized. Among other distinctions, he has received the Mérite du Barreau, the Past Presidents’ Medal of the Lord Reading Law Society, the D’Arcy McGee Citizenship Medal, and, in 2025, the Lifetime Achievement Award of the English-Speaking Section of the Bar of Montreal.

In 2025, Me Solloway joined Goldwater Droit as Counsel, continuing to advise clients in complex family law matters and to mentor the next generation of legal professionals.

## IAFL USA CHAPTER MEETING – JANUARY 2026

### Jurisdictional Differences

#### Fact Patterns for discussion

#### 1. Where to divorce?

Amy and Steven have been married for 16 years. Amy was born and brought up in London; Steven is Canadian. They have lived in Maryland for the last 5 years, having married and lived in London before then, as Steven is an actor and having had a small part in a mini series on the BBC, he decided to try his luck in the USA. So far, his work has been going extremely well and he has just landed a part in an upcoming season of The Gilded Age. Amy does some part time work as a stylist in between looking after the children.

Amy and Steven have 3 children – Tricia who is aged 15 and was born in London; Trinity who is aged 10 and was born in Montreal and Tiffany who is 4 years old and was born in Maryland. All 3 children are now being educated in Washington DC at the British International School there.

Amy owns a small property in Edinburgh and her bank accounts are mainly in Scotland and England. Her parents are Scottish by birth and extremely wealthy. Sadly, she has always suffered with depression, made worse since Tiffany was born and she has been under the care of a London-based psychiatrist for many years. She travels back to London to see him every 6 weeks or so and then also has online appointments. She misses London and only agreed to go to Washington temporarily to support Steven.

Steven has a small cabin In the Laurentians, north of Montreal, which is where he still goes at least twice a year to relax and switch off with his buddies. His entire family still live in Toronto and Montreal and he sees them as often as his work allows.

They jointly own the house where they live in Maryland; they also have a joint account there.

Amy is unsure of what else there is financially as she has always left Steven to deal with their financial affairs.

#### **Discussion**

- Can Amy start divorce proceedings in your country?
- What do you need to consider before issuing any proceedings?
- How would your court deal with finances in terms of disclosure?
- How would your court deal with the foreign assets?

## 2. Forum Selection Clauses : Choice .....or Illusion?

John and Natalie were married in Maryland in 2016 . John is American, born in Maryland. Nathalie is Canadian, born in Montreal, Quebec. John owns a travel agency and several commercial properties in Bethesda, Maryland. Nathalie is a nurse. She has not worked since the marriage . The parties have one child, Katie, born in Bethesda. Katie is presently age 9 years old. The parties have been domiciled and resident in Maryland throughout their marriage.

In 2024 John and Nathalie separated. They signed a “Separation Agreement” which provided for the division of marital property and spousal support for Nathalie. They also executed a “Shared Parenting Plan” which provided for their respective parenting times, and child support to be paid by John.

In their “Separation Agreement”, the parties stipulated that their “Shared Parenting Plan”, executed pursuant to the Maryland Code, MD Code, Family Law, § 9.5-202, “resolves all issues with respect to the minor child Katie, including , but not limited to ,living arrangements, child support, and visitation. The parties also stipulated “that all provisions of this Agreement shall be construed and enforced in accordance with the applicable law of the State of Maryland”.

In the paragraph of their “Shared Parenting Plan” entitled ”Modification”, the parties stipulated that the “said Parenting Plan is subject to the continuing Jurisdiction of the Maryland Court”. The parties further stipulated that the “United States of America shall have exclusive jurisdiction over the custody, care, and control of the minor child, Katie, and more specifically, the State of Maryland shall retain that jurisdiction, to the exclusion of all other Courts, foreign or domestic”.

In 2025, John and Nathalie were divorced in Maryland. The “Separation Agreement” was approved and incorporated by the Court into the Maryland Divorce Judgment. The “Shared Parenting Plan” was also ratified by the Court in a “Final Shared Parenting Decree”, which was appended to the Maryland Divorce Judgment. Shortly after the divorce, Nathalie and Katie relocated to Montreal. John did not oppose the move.

In April 2026, Nathalie served John with a Motion for Child Support, Special Expenses, Spousal Support, Unjust Enrichment, and Financial Expertise, presentable before the Quebec Superior Court. John has countered with a Motion for a Declinatory Exception, invoking the “ forum selection “ and Maryland “Choice of Law” clauses contained in the Maryland “ Shared Parenting Plan” and ‘Separation Agreement”.

John also maintained, alternatively, that the Quebec Court should decline jurisdiction in favour of the Maryland Court based on the doctrine of “*forum non-conveniens*” – that Maryland is clearly the more appropriate forum to hear and adjudicate Nathalie’s Motion. John lists the various connecting factors in support of his demand, including, that the agreement of the parties that the Maryland Court would have continuing exclusive jurisdiction over custody, child and

spousal support; that the construction and enforcement of the Separation Agreement would be done in accordance with Maryland law; that the obligation of support was governed by the law applicable to their divorce –Maryland law; that Quebec would have to apply Maryland law in respect of the child and spousal support order made there, which would have to be pleaded and proved before the Quebec court; that there is no reciprocal enforcement of support orders between Maryland and Quebec; that any variation of the Maryland child / spousal support order would have to be exemplified by the Maryland Court in order to be enforced there; how would the Maryland Court treat a Quebec judgment that modifies an Maryland judgment ratifying an agreement containing an exclusive Maryland “forum selection clause”? John also noted that that all of his assets are located in Maryland ; all witnesses are in that state and are not compellable before the Quebec court; and Nathalie is demanding a formal valuation of John’s company which is located in Maryland.

#### Discussion

- How is a “forum selection clause” in a Separation Agreement viewed in your jurisdiction?
- How would a court in your jurisdiction deal with this case?
- How likely is it that a court in your jurisdiction would decline to exercise jurisdiction over Nathalie’s Motion based on “*forum non-conveniens*”?
- Would your court respect the “Choice of Law” clause in the Separation Agreement if it were to exercise jurisdiction?

### 3. **Is the law for alimony gender and age neutral?**

Michael and Steven met in 2013. Michael is 10 years older than Steven, and he is now aged 70. Steven is from Scotland. Michael is a dual US and Canadian citizen. He is a highly successful serial entrepreneur, with a net worth of about \$60 million. His children from his previous marriage are in their 40’s and all live in the USA.

Steven is a trained accountant, who was working in private practice when he and Michael met. Steven had two children from his previous marriage, who were both teenagers when they first got together. Between 2013 and 2018, Steven and Michael spent a lot of time together, travelled together, but maintained separated residences. Steven claimed to have trouble meeting his bills, so Michael paid him \$5,000 per month to help him out.

In 2018, once his children were independent, Steven moved into Michael’s home, which Michael had purchased several years before. Steven left private practice as an accountant and went in-house, but in 2022, he stopped working as the stress was difficult for him to manage. Michael paid all of their expenses, including extensive travel, entertaining, and Steven’s personal expenses.

Michael bought a vacation property outside of his home jurisdiction. Michael and Steven fixed up the property together, although Michael paid all the bills. They, Michael's children and their families, and Steven's children on occasion, spent time at the vacation property.

Steven became unhappy in the relationship and moved out in 2025. Michael let Steven continue to use his credit card (with a maximum credit limit of \$50,000) and drive his Porsche, for which Michael paid all the carrying costs. Steven has been spending about \$15,000 per month on the credit card, which Michael pays in full each month.

Steven now says the relationship is permanently over, and he wants spousal support. He claims Michael should pay him \$45,000 per month so that he can maintain the same lifestyle they enjoyed together. Steven wants \$3 million to compensate him for the effort he put into the relationship and the renovation and decoration of the vacation property. Steven's net worth has increased, in part because he received an advance inheritance from his parents, and is now about \$3 million. Steven has no plans to return to work as an accountant.

What would a court in your jurisdiction do with this claim?

#### 4. **Cross-Border Love**

Selwyn and Miranda are engaged to be married. The date set for the wedding is 3 months away. Miranda and Selwyn are currently living and working in Washington DC where they have been for three years. Miranda is a dual Canadian and UK citizen. Selwyn is a US citizen from Maryland. Selwyn and Miranda do not know if they want to stay in the USA long term, but they do not have any particular desire at this time to locate to any other jurisdiction.

Miranda's parents reside in Ontario, and have significant accumulated wealth which they built up since they moved to Canada from the UK. Some years ago, they did an estate freeze for tax planning purposes, and set up a family trust as part of the freeze, which holds the common shares of the family holding company. Miranda's parents hold fixed value voting control preference shares. The value of the underlying assets in the family holding company has grown and the common shares have significantly increased in value. The family trust is fully discretionary, and Miranda and her two siblings are listed as potential beneficiaries, along with any children they each might have. Miranda's parents are the trustees. The trust's 21<sup>st</sup> anniversary is in 14 years. Miranda's parents used monies from the trust to pay for Miranda's post-secondary and graduate education.

Miranda and Selwyn are renting in . Miranda owns a condo in Toronto with her sister – the purchase was funded with monies distributed to them from the trust. Selwyn and Miranda stay at the condo when they come to Toronto.

Selwyn's parents are wealthy as well. Selwyn is a beneficiary of his grandfather's estate – he is not clear on the details, but thinks it has something to do with taxes. Selwyn believes he will eventually inherit the funds from the estate – he gets a modest amount paid to him each year by the estate's trustees.

Selwyn's parents own a ski chalet in Quebec. Selwyn and Miranda vacation there regularly, sometimes with Selwyn's family, and occasionally on their own. Selwyn understands that it is owned by a family company, or a trust, and that one day it will belong to him and his siblings.

***Discussion:***

- Should Selwyn and Miranda consider entering into a marriage contract/prenuptial agreement?
- Should the contract be done in D.C, Ontario, Maryland, or some other place?
- What issues should they deal with in the contract? What options do they have?
- Are there matters that they cannot/should not try to address?
- Miranda's parents have not told her about the extent of their personal wealth – they are hesitant to disclose that now. Do they have to do that?

# The International Academy of Family Law

Canadian Chapter Mini-Meeting  
Montreal Québec, June 2026

## Jurisdictional Differences - Canadian Family Law

Karon C. Bales, C.S., T.E.P.  
Bales Beall LLP

### Background

There are two levels of government in Canada: (1) federal government and (2) provincial and territorial government. Canada is a parliamentary democracy and a constitutional monarchy. With respect to family law, the federal government has jurisdiction to enact laws related to marriage and divorce<sup>1</sup>, and the ten provinces and three territories have the jurisdiction to enact laws that cover property and civil rights<sup>2</sup>. In general, the laws follow the English common law system, with the exception of Québec, which is a civil law system (based on its history with France)<sup>3</sup>.

From Newfoundland to Vancouver Island, divorce is possible if there is a marriage breakdown after one year<sup>4</sup>. The federal government legislation deal with marriage and divorce. There are provisions for divorce on the grounds of adultery and mental/physical cruelty, however, the general provision relied upon for marriage breakdown is separation with no possibility of reconciliation for a period of one year.

The federal government has jurisdiction to deal with parenting issues, child support and spousal support for legally married couples. There are Federal *Child Support Guidelines*<sup>5</sup>, which are mandatory in all provinces. Child support payments are neither taxable in the hands of the payee, or deductible by the payor.

For spousal support for a married couple, Canada has Spousal Support Advisory Guidelines<sup>6</sup>, known as “SSAGs”. The SSAGs are only advisory, but most Canadian courts, other than in the Province of Québec, will follow the SSAGs for legally married or non-married cohabiting couples. Judges tend to apply the guidelines, even though they do not have the force of law.

Spousal support awards in Canada, especially in Ontario, can be very generous and not time-limited. Spousal support is taxable in the hands of the recipient, and deductible by the payor.

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<sup>1</sup> *Constitution Act, 1867*, as amended, s. 91 (26)

<sup>2</sup> *Constitution Act, 1867*, as amended, s. 92 (13)

<sup>3</sup> Family law in Québec will be addressed by my colleague, Ian Soloway

<sup>4</sup> *Divorce Act*, R.S.C., 1985, c. 3 (2nd Supp.), s. 8(2)

<sup>5</sup> SOR/97-75, a regulation promulgated under the *Divorce Act*.

<sup>6</sup> <https://www.justice.gc.ca/eng/rp-pr/fl-lf/spousal-epoux/spag/index.html>

Canada has recognized same-sex marriage federally since 2005<sup>7</sup>, although some provinces, such as Ontario, recognized same sex marriage as of 2003. However, the laws relating to cohabiting, non-married couples are governed by provincial and territorial legislation, which deal with cohabitation and issues related to custody, spousal support, and child support for non-married spouses. In Canada, the terms spouse and spousal are used when referring to a non-married, co-habiting couple.

Family law proceedings in Ontario courts – the Ontario Superior Court - are governed by the federal *Divorce Act*, combined with the provincial division of property. Thus, there are two levels of legislation applied by the same judge in the same proceeding.

### **Jurisdictional Issues – Common Law Couples**

What if you have a non-married, cohabiting couple? The provinces differ, but generally take the same approach. The rules for child support mirror the federal *Child Support Guidelines*. However, provincial rules for spousal support differ for unmarried couples. Outside Québec, for non-married couples, some provinces allow for spousal support based on time together. But on a relationship breakdown, there is not necessarily any right to share in any of the other spouse's property or increase in value of spouse's property if the couple was not married.

Property and civil rights are the exclusive jurisdiction of the provinces and territories. Thus the division of property on the breakdown of the marriage of a legally married or common law couple is governed by the province in which they were residing when the marriage or relationship broke down.

Some provinces provide for division of assets when a cohabiting non-married couple separates – British Columbia, Nova Scotia, Alberta, Manitoba, Saskatchewan fall in this category. Ontario and Prince Edward Island do not provide for statutory asset division for non-married couples.

### **Asset Division on Divorce**

For the division of property in a divorce, there are two main approaches. New Brunswick and Newfoundland are asset division jurisdictions. Certain assets are deemed family assets and treated as owned 50/50—such as residences, contents of the residences, vehicles, and retirement savings. Non-family assets are not usually divisible except for detailed exceptions, such as if the spouses both worked in the business, invested in the business, or utilized a business loan based on the personal residence.

The other provincial approach in divorce is utilized by provinces such as Ontario<sup>8</sup>. Other than property before marriage and gifts/inheritances from a third party after marriage<sup>9</sup>,

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<sup>7</sup> *Civil Marriage Act*, S.C. 2005, c. 33, s. 2

<sup>8</sup> *Family Law Act*, R.S.O. 1990, c. F.3, s.5

<sup>9</sup> *Family Law Act*, s. 4(2) definition of excluded property:

(2) The value of the following property that a spouse owns on the valuation date does not form part of the spouse's net family property:

property is divided equally by value and satisfied by an equalization payment. The judge will order the payment, but the parties can settle it themselves with different assets. Each spouse does not actually own the property 50/50. This approach is called “Net Family Property” in Ontario. For purposes of value division, the valuation date is the date of separation, not the date of a settlement or trial, except for jointly owned assets. To determine Net Family Property, one calculates the net value of what each spouse owned on the date of marriage versus the net value what each spouse owns on the date of separation.

There is a safety net in case of death, in which case the valuation date can also be the date of death<sup>10</sup>. A spouse can claim an equalization payment if the other spouse dies and they were not separated—based on the value on the day before death. A spouse could use the safety net if one spouse were to leave everything to charity at death and not to the surviving spouse.

### Trust Interests in Ontario

If there is a fully discretionary trust settled by third party prior to a couple’s marriage, it does not matter if the trust is contingent. The law is clear that the value of the beneficiary spouse’s interest is an asset to be included in Net Family Property<sup>11</sup>. If the trust is in existence on the date of marriage, a spouse beneficiary may have to make payment to the estranged spouse based on the value of assets held in trust, regardless of whether the trust is still in existence, or has been distributed. If distributed, the spouse deducts the “value” of their interest as a (fully discretionary) beneficiary on the date of marriage, and includes the net value of the assets distributed to that spouse

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1. Property, other than a matrimonial home, that was acquired by gift or inheritance from a third person after the date of the marriage.
  2. Income from property referred to in paragraph 1, if the donor or testator has expressly stated that it is to be excluded from the spouse’s net family property.
  3. Damages or a right to damages for personal injuries, nervous shock, mental distress or loss of guidance, care and companionship, or the part of a settlement that represents those damages.
  4. Proceeds or a right to proceeds of a policy of life insurance, as defined under the Insurance Act, that are payable on the death of the life insured.
  5. Property, other than a matrimonial home, into which property referred to in paragraphs 1 to 4 can be traced.
  6. Property that the spouses have agreed by a domestic contract is not to be included in the spouse’s net family property.
  7. Unadjusted pensionable earnings under the Canada Pension Plan.

<sup>10</sup> *Family Law Act*, s. 6

<sup>11</sup> *Family Law Act*, s. 4(1), definition of “property”:

“property” means any interest, present or future, vested or contingent, in real or personal property and includes,

- (a) property over which a spouse has, alone or in conjunction with another person, a power of appointment exercisable in favour of himself or herself,
- (b) property disposed of by a spouse but over which the spouse has, alone or in conjunction with another person, a power to revoke the disposition or a power to consume or dispose of the property, and
- (c) in the case of a spouse’s rights under a pension plan, the imputed value, for family law purposes, of the spouse’s interest in the plan, as determined in accordance with section 10.1, for the period beginning with the date of the marriage and ending on the valuation date;

during the marriage, if still owned or converted into another assets which exists on date of separation .

If the trust is settled by a third party (not the spouse) after the marriage, then the interest the spouse has as a beneficiary is treated as gifted or inherited property and excluded from Net Family Property. If the trust is settled during the marriage, and assets distributed during the marriage, then the distributed assets, or whatever they can be traced to (other than a matrimonial home), are also excluded from sharing with the other spouse on marriage breakdown.

In Canada, an estate freeze is often used as an estate and tax planning device. The current value of assets—for example, common shares of a family business—is frozen with Generation 1, and any future increase in value accrues to the child or grandchild (Generation 2 or 3). Generation 1 locks in the current value with special preferred shares. If an adult child is not yet married at the time of an estate freeze, then the increase in value of the shares held by the child directly or through a trust of which the child is a beneficiary will be shareable with the spouse. This is not often desirable because the child cannot liquidate those shares. Family lawyers are often called up on to assist those families with a marriage contract to change that property from a deduction in calculating Net Family Property to an exclusion. A spouse who receives a gift of shares or substantial funds during a marriage will need to trace assets acquired with the gift/inheritance to make sure the traceable assets will be excluded.

### **Domestic Contracts**

In Canada, domestic contracts such as marriage contracts – includes pre- or post-nuptial contracts – and cohabitation agreements are recognized by statute in Ontario<sup>12</sup> and other provinces. In order for the domestic contract to be valid, the following is required:

- (1) full financial disclosure;
- (2) effective independent advice or a real opportunity to obtain same; and
- (3) no duress.

Properly negotiated marriage contracts with appropriate financial disclosure will be enforced by the courts. However, the parties cannot deal with custody, access, or parenting arrangements; they also cannot deal with child support. It is not possible to restrict rights to a matrimonial home in Ontario for legally married (not just cohabiting) spouses<sup>13</sup> —meaning the owner spouse cannot change locks or evict the other spouse on a breakdown. A spouse will need to leave voluntarily, or a court can order them out.

There can be more than one matrimonial home. Even a sailboat could be a matrimonial home. If spouses already own a home on the date of marriage, the owner spouse

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<sup>12</sup> *Family Law Act*, s. 56(4)

<sup>13</sup> *Family Law Act*, s.18, 19, 52(2)

cannot deduct the value of the equity in it on date of marriage from their Net Family Property<sup>14</sup>, unless there is a domestic contract which provides otherwise. There is an equalization payment of 50% of the value in that home, not just the increase in value. If a spouse inherits or is gifted a family recreational property after marriage, it still may be a matrimonial home—even if it is inherited together with siblings and even though it looks like a gift/inheritance received after marriage. If parents make a financial gift to a child which is invested in a matrimonial home, it loses its character as excluded property<sup>15</sup>. It is common in a marriage contract to include terms addressing these adverse presumptions.

In a marriage contract it is possible to modify the definition of Net Family Property, substitute a sliding scale sum based on length of marriage, or contract out of the equalization of Net Family Property altogether.

In Canada, spousal support orders can be made for an indefinite period, subject to review if there is a material change in the financial circumstances of one of the spouses. Spousal support awards can be very generous. It can be risky to address spousal support in a domestic contract as it is possible that, if the provisions at the time of the breakdown of the marriage are found to be unconscionable, a judge can set part or all of the domestic contract aside. Accordingly, most clients want to protect property more than spousal support with a domestic contract.

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<sup>14</sup> *Family Law Act*, s. 4(1) definition of net family property:  
means the value of all the property, except property described in subsection (2), that a spouse owns on the valuation date, after deducting,  
(a) the spouse's debts and other liabilities, and  
(b) the value of property, other than a matrimonial home, that the spouse owned on the date of the marriage, after deducting the spouse's debts and other liabilities, other than debts or liabilities related directly to the acquisition or significant improvement of a matrimonial home, calculated as of the date of the marriage [emphasis added]

<sup>15</sup> See the definition of "excluded property" in footnote 6 above.

The International Academy of Family Law  
Canadian Chapter  
Introduction to International Family Law Conference  
Montreal- June 12 2026

**Cross Border Family Law Issues-The Quebec View**

**Me Ian M.Solloway  
Goldwater Droit**

**Marriage**

The Civil Code of Quebec establishes the “**matrimonial regime**”<sup>1</sup> of the spouses (i.e. the law which governs the property relations of the spouses during the marriage and provides the rules of partition upon marital dissolution) by referring to the law of their **domicile** at the time of **solemnization of their marriage**.<sup>2</sup> Parties who are domiciled in the Province of Quebec and marry in Quebec are subject to the laws of Quebec regarding matrimonial property. If the spouses are, however, domiciled in different countries at the time of the solemnization of their marriage, Quebec applies its private international law rule enunciated in Art. 3123(2) of the Civil Code of Quebec (C.C.Q.), which states:

*“.....the applicable law (with respect to the matrimonial regime of the spouses) is the **law of their first common residence** or, failing that, the **law of their common nationality**, or failing that, the **law of the place of solemnization of the marriage**.”<sup>3</sup>*

Quebec law provides for two codified matrimonial regimes. However, Quebec law states that the future spouses are free to choose their matrimonial regime and enter into a marriage contract, wherein they may adopt the rules that will govern their patrimonial relationship, provided that the provisions of the marriage contract are not contrary to the imperative provisions of Quebec’s Civil Code and / or public order.

The two codified matrimonial regimes are:

- I. **Partnership of Acquests**- the legal or default matrimonial regime in Quebec Under the Partnership of Acquests matrimonial regime, property owned by each spouse as at the date of the marriage is his or her **private property**, as the case may be. Property acquired by each spouse during the marriage is his or her **acquest(s)**, except gifts and legacies which remain private property.<sup>4</sup> All interest and/or revenues generated from a spouse’s private property or acquests are his / her acquests. However, interest and/or revenues from gifts

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<sup>1</sup> Art.3123 (1) C.C.Q.

<sup>2</sup> Art. 3123 (2) C.C.Q.

<sup>3</sup> *Ibid*

<sup>4</sup> Art,450 C.C.Q.

and legacies will remain private property if the donor or testator so stipulates in the Deed of Donation or Will, as the case may be.

- II. **Separation as to Property**, in which any property acquired by either spouse prior to or during the marriage is his or her sole and exclusive property. Each spouse retains exclusive ownership of his / her property acquired without partition or equalization. The matrimonial regime of separation as to property must be stipulated by the parties in a marriage contract, which, if done in Quebec, must be prepared by a notary.

During the marriage, the regime of Partnership of Acquests operates in the same manner as the conventional regime of Separation as to Property, save that a spouse may not give away his/her acquests without the consent of the other, except for property of small value or customary gifts.<sup>5</sup> Upon dissolution of the marriage, under the regime of Partnership of Acquests, each spouse retains his/her private property and has the right to accept or renounce to the partition of the net value of the other spouse's acquests.<sup>6</sup> If partition is accepted at dissolution, the net value of the acquests of each spouse is established, and subject to certain adjustments and compensations, is divided equally<sup>7</sup> The spouse owing the greater amount pays it to the other in money or by transfer of property<sup>8</sup>.

The foregoing having been said, the Quebec Civil Code contains certain **imperative provisions (“effects of marriage”<sup>9</sup>)** that are binding on all spouses, no matter where they were married, no matter what their matrimonial regime is, and whether or not they have a marriage contract / pre-nuptial agreement. One of those imperative effects of marriage is the establishment and partition of certain specific assets, known as “**family patrimony**”<sup>10</sup>, namely:

1. *the family residence(s);*
2. *the household furniture and furnishings garnishing the family residence(s);*
3. *the vehicle(s) used for family travels;*
4. *the benefits accrued during the marriage under a retirement plan;*
5. *the registered earnings accrued during the marriage by each spouse under the Quebec Pension Plan or similar plans*

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<sup>5</sup> Arts.461,462 C.C.Q.

<sup>6</sup> Art.467 C.C.Q.

<sup>7</sup> Art. 481 C.C.Q.

<sup>8</sup> *Ibid*

<sup>9</sup> Art.391 C.C.Q.

<sup>10</sup> Art.414 C.C.Q.

Quebec law distinguishes between ownership and patrimonial consequences of marriage. Upon marital dissolution, the **net value**<sup>11</sup> of the **family patrimony** is in theory equally partitioned between the spouses, not the assets *in specie*. The key word is “**value**”. The ownership of the asset(s) is not affected.

The rules regarding family patrimony are of **public order** in Quebec. The parties **cannot contract out of or renounce** their family patrimony rights prior to or during the marriage, whether by private agreement, marriage contract / pre-nuptial or post-nuptial agreement executed in Quebec or in any other jurisdiction<sup>12</sup>. Any such agreement outside the context of marital dissolution proceedings excluding family patrimony, expressly or by implication, is illegal and would be unenforceable by the courts in Quebec.

A cautionary note – parties with foreign pre-nuptial agreements who may eventually consider relocating to Quebec should be aware of Quebec’s mandatory family law rules.

### **Parental Union**

On June 30, 2025, Quebec introduced a new legal institution known as the “**parental union**” (“*union parentale*”), creating a distinct patrimonial framework automatically applicable to certain **de facto spouses** who become parents of a **child after that date**<sup>13</sup>.

De facto spouses who have a child born before June 30, 2025, do not automatically become subject to the “parental union” regime, unless they voluntarily opt in<sup>14</sup>. The new provisions reflect a significant evolution in Quebec family law which had historically been characterized by the absence of patrimonial rights for unmarried spouses in Quebec.

The new “parental union” regime entails the establishment of a “**parental union patrimony**” (“*patrimoine d’union parentale*<sup>15</sup>), which includes the family residence(s) the household furnishings, and motor vehicles used for family purposes. The **net value** of the parental union property is equally divided between the parental union spouses upon the dissolution of the parental union<sup>16</sup>.

### **Trusts**

Although a trust is recognized in Quebec as a distinct “patrimony by appropriation” under the Quebec Civil Code<sup>17</sup>, Quebec courts remain attentive to attempts to use trust

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<sup>11</sup> Art.416 C.C.Q.

<sup>12</sup> Art.423 C.C.Q.

<sup>13</sup> Art.521.20 C.C.Q.

<sup>14</sup> *Ibid*

<sup>15</sup> Art. 521.29

<sup>16</sup> Art.521.34 C.C.Q.

<sup>17</sup> Art.1261 C.C.Q.

structures to shield assets from otherwise applicable mandatory Quebec family law obligations, including, family patrimony. Quebec courts will therefore look beyond the formal ownership structure of a trust where necessary to preserve the public order character of the family patrimony.

Quebec courts will examine the true nature, purpose, and economic reality of the trust relationship, particularly where one spouse exercises effective control over trust assets or has historically benefited from them in a consistent and predictable manner<sup>18</sup>. In short, family trusts are not automatically immune from scrutiny in divorce proceedings simply because they are structured as discretionary or formally separate patrimonies

### **Jurisdiction – Quebec’s Conflict Rules**

Whenever a Quebec court is confronted with an international or interprovincial family law dispute, it must generally undertake two distinct, though closely related, analyses. First, the court must determine whether Quebec authorities have jurisdiction to hear and decide the dispute at all. Secondly, if jurisdiction exists, the court must then determine which law governs the substantive issue(s) before it.

Quebec private international law does not adopt a single universal jurisdictional rule for all family law matters.

In any matter of a family nature, Quebec courts have personal jurisdiction if one of the parties is **domiciled** in Quebec<sup>19</sup>. However, in the case of **divorce**, which is governed by federal legislation (*the Divorce Act*)<sup>20</sup>, jurisdiction is based on *the ordinary residence of one of the spouses in the province for at least one year immediately preceding the commencement of the proceeding*<sup>21</sup>.

Quebec courts have jurisdiction in **child custody** matters provided that the child is **domiciled** in Quebec. However, in cases of emergency or serious inconvenience, Quebec courts may take jurisdiction for the protection of a child who is not domiciled , but, merely **present** in Quebec.<sup>22</sup>

As far as the “**effects of marriage** “(spousal support, child support, family patrimony, compensatory allowance) are concerned, Quebec law stipulates that Quebec courts have jurisdiction if either one of the spouses is **domiciled** or **resident** in Quebec.

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<sup>18</sup> *Yared v. Karem*, 2019 SCC 62

<sup>19</sup> *Art. 3141 C.C.Q.*

<sup>20</sup> *Divorce Act, R.S.C. 1985, C.3 (2<sup>nd</sup> Supp)*

<sup>21</sup> *Ibid.*, S. 3(1)

<sup>22</sup> *Art. 3140 C.C.Q.*

In Quebec, the law that will apply to a particular family issue is determined by distinct conflict rules which vary depending on the specific subject at issue - whether it is custody, spousal or child support, or property. Each subject is governed by its own connecting factor.

The “**effects of marriage**” are subject to the **law of the domicile of the spouses**. However, where the spouses are domiciled in different jurisdictions, the applicable law is the law of their **common residence**. If there is **no common residence** the law of their **last common residence** governs. If that fails, the **law of the place of solemnization** of their marriage applies.<sup>23</sup>

Consequently, if either one of the spouses were ordinarily resident in Quebec for at least one year before the institution of divorce proceedings in Quebec, and the spouses’ last common residence was in Quebec, Quebec’s imperative family patrimony rules will apply to the divorce. This is the case even if the division of assets is otherwise subject to foreign law due to a foreign matrimonial regime, marriage contract or pre-nuptial agreement.

As to Quebec's new “parental union” regime, its conflict of law implications remain largely unresolved, as the legislation is still recent and there is little or no jurisprudence yet directly addressing its extra-provincial or international application. Whether Quebec courts ultimately characterize the “parental union” as a mandatory economic consequence of parenthood, a family-status regime analogous to family patrimony for certain assets, or a form of mandatory public order protection attached to the family residence and family unit may significantly affect the applicable conflict of law analysis.

Insofar as **spousal support** is concerned, Quebec’s conflict of law rule provides that the obligation of support or its modification is governed by the **law of the domicile** of the **spousal support creditor**<sup>24</sup>. This would be the case in non-divorce situations.

In the context of divorce proceedings, **child support** is determined by the Federal Child Support Guidelines of the province of the child support payor<sup>25</sup> if the payor resides in Canada. If the child support payor resides in the Province of Quebec for example, the Federal Child Support table for Quebec will apply to determine the child support amount.<sup>26</sup> Where one of the spouses who is subject to a child support order resides outside Canada, the Federal Child Support table of the province where the creditor resides will apply<sup>27</sup>.

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<sup>23</sup> *Art. 3089 C.C.Q.*

<sup>24</sup> *Art. 3094 C.C.Q.*

<sup>25</sup> *Federal Child Support Guidelines, SOR/97-175*

<sup>26</sup> *Ibid, S.3 (a)(i)*

<sup>27</sup> *Ibid, S.3(a)iii)*

In the case of a **family trust**, Quebec courts will generally recognize and apply the governing law expressly designated or reasonably inferred from the trust document, or failing that, the law most closely connected with the trust, considering factors such as the administration of the trust and where the trust assets are located.<sup>28</sup> That said however, if the trust is being invoked to defeat or avoid the partition of family patrimony, a compensatory allowance claim, spousal support obligations, or other mandatory economic consequences of marriage or its breakdown, Quebec courts may nonetheless apply the overriding Quebec family law rules of public order.<sup>29</sup>

### **Foreign Orders and Enforcement**

Quebec generally adopts a relatively liberal approach favoring the recognition of foreign judgments. The role of the Quebec court is not to retry the foreign case, but rather to determine whether the foreign authority exercised jurisdiction on an internationally acceptable basis, whether recognition would be compatible with Quebec public order, and whether the foreign proceedings respected fundamental procedural fairness.<sup>30</sup>

The principal grounds upon which a Quebec court may refuse **recognition or enforcement** of a foreign judgment include: (1) where the foreign authority lacked jurisdiction under Quebec conflict rules, (2) where the decision is subject to ordinary appeal; (3) where the judgment was rendered in breach of fundamental procedural fairness; (4) where recognition would produce a result manifestly inconsistent with Quebec international public order<sup>31</sup>. In family law matters., Quebec courts are particularly attentive to issues involving proper notice, the opportunity to be heard, and the protection of children.

Quebec has reciprocal arrangements with the following ten U.S. states for the enforcement of child and spousal support orders, namely: New York, New Jersey, Massachusetts, Pennsylvania, Maine, Vermont, New Hampshire, Florida, California, and Oregon. Under the *Reciprocal Enforcement of Maintenance Orders Act*<sup>32</sup>, a child or spousal support order issued in any of these designated states, may be reciprocally enforced in Quebec through the Minister of Revenue. Likewise, a Quebec support order may be enforced in any of these reciprocal U.S. jurisdictions under the same statutory mechanism.<sup>33</sup> .

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<sup>28</sup> *Art.3107 C.C.Q.*

<sup>29</sup> *Art.3081 C.C.Q.*

<sup>30</sup> *Art.3155 C.C.Q.*

<sup>31</sup> *Ibid*

<sup>32</sup> *Act respecting reciprocal enforcement of maintenance orders, CQLR cE-19*

<sup>33</sup> *Regulation respecting reciprocal states and designated authorities under the Act respecting reciprocal enforcement of maintenance orders*

Quebec also maintains reciprocal child and spousal support enforcement arrangements with a number of foreign jurisdictions.

There is also interprovincial enforcement of child and spousal support in Canada through the designated enforcement authority in each province.

Support orders from jurisdictions that do not have reciprocal enforcement arrangements must first be recognized and declared enforceable by Quebec courts through exequatur proceedings before any enforcement measures can be taken in Quebec.<sup>34</sup>

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<sup>34</sup> **Art. 3155 C.C.Q.**