

## COVID-19 & ONTARIO FAMILY LAW

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## Three ways a prenuptial agreement (marriage contract) can benefit your marriage

On behalf of Gene C. Colman Family Law Centre posted in [Family Law](#) on Wednesday, October 28, 2020.

If you are planning a wedding, the ideas of individual wealth preservation and life after divorce may not exactly be on your radar. If they are, you might feel guilty about discussing

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### **Three ways a prenuptial agreement (marriage contract) can benefit your marriage**

a prenuptial agreement, also known in Ontario as a "marriage contract". (Unmarried couples can also enter into a "Cohabitation Agreement". Much of what we write here can apply in that situation as well.)

However, rather than think about this contract as something uncomfortable or upsetting, it might help if you consider the following ways that discussing and seriously considering a prenu or marriage contract can actually benefit your marriage.

#### **1. It makes you have some difficult conversations.**

If you are at the point of marrying someone, you likely assume you know everything about each other. However, you may not have discussed certain potentially awkward or painful topics.

When you talk to your partner about a marriage contract, you can discuss [critical matters](#) like financial resources, marital expectations, family legacies and division of assets upon (heaven forbid) separation/divorce. These can be uncomfortable conversations you may not have had outside this context. Thus, having them before you marry ensures you are fully informed before you say, "I do."

#### **2. It can give you (and importantly your families) peace of mind.**

People who have family businesses or property might worry about losing those assets through a forced sale if someone with a stake in them divorces.

A marriage contract can be designed to provide the maximum protection possible to family-owned businesses and properties - keeping them intact, even if a marriage ends. Without such an agreement, you are at risk not only to having to pay a large property "equalization payment", but there is even the potential of a a forced sale of your interest in the family business.

A prenuptial agreement can help you feel confident in what

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you will keep (or receive) in terms of equalizing the wealth accrued during the marriage (that's what we do in Ontario). Having the parameters for property decisions made before you get married allows provides some degree of certainty to the newliwed and to his/her family. Everyone can then hopefully breathe easier.

### 3. It acts as a safety net (not a crystal ball)

There is a very natural human tendency to dismiss the concept of even considering [a marriage contract](#) because one may think that it shows a lack of faith in the upcoming joyous union. One may see it as a sign that someone expects the marriage to fail.

However, a prenup is not a crystal ball. It does not predict the future or increase the chance of divorce. Rather, it acts as a safety net - it's there to protect you if you ever need it.

If you can look at these contracts from this perspective, you can approach the subject more positively and from a place where you can both benefit from the discussion. And hopefully, the conversation leaves you more prepared and confident in the next step of your lives together.

### Caveats

There are some very important factors that must be adhered to in order to have what will hopefully be a marriage contract that the courts will uphold and not overturn should there be a need to open the marriage contract later in life due to separation and divorce: **1. Independent legal representation throughout the process; 2. Full and frank financial disclosure made in writing; 3. Absence of fraud, duress and undue influence.** We discuss these factors in two places in our website. [Here](#) and [here](#).

One can always find on line do it yourselfers. Colman says: Don't waste your time with those.

Along a similar vein, one can always find some lawyer who

will represent both sides and who won't insist on financial disclosure the way that the Colman firm does. (That is not to say that there are not many fine family law lawyers in the province who are just as careful as the Colman firm. There surely are. We are talking here about some lawyers who do not take that degree of care that is required in these situations.) Some lawyers will charge you a really cheap price. When those contracts get challenged years later, the courts tend to overturn them. At the Gene C. Colman Family Law Centre we *never* represent both sides. Neither do we even try to compete on price with others. We simply charge an appropriate professional fee for an appropriate professional service.

If you are serious about a marriage contract, if you want a contract that will more likely hold up later if regrettably you need it - then the Gene C. Colman Family Law Centre may be able to assist you. On the other hand, if you want just the cheapest price and / or a contract hastily put together just days or a few weeks prior to the marriage, then we are not the right lawyers for you.

We epitomize caution, professionalism, competence and knowledge. If those qualities appeal to you, then perhaps we can help you.

And by the way, hearty congratulations on your upcoming marriage!

Tags: [Cohabitation Agreement](#), [Domestic Contract](#), [Family Law](#), [Marriage Contract](#)

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