

Domestic
Contract Matter
TOOLKIT



Between 2007 and 2011, 830 family law claims were reported to LAWPRO. These claims are costly. Resolving them will cost LAWPRO approximately \$21 million. Some of these claims arose due to real (or alleged) problems with domestic contract matters. That is the bad news.

Domestic contracts are complex documents that deal with complicated issues involving emotional clients. The dangers are real and there are many places that errors can occur. The good news is that the risks involved in handling domestic contract matters can be greatly reduced. This toolkit is designed to help Ontario lawyers proactively take steps to reduce their exposure to claims when they are working on domestic contract matters.

Like most other areas of law, lawyer/client communications issues can play a significant role in domestic contract claims. The complexity of the subject matter makes it easy for clients to allege there were communication problems or errors. They will say that provisions were not explained to them, that they didn't understand them or that they created unexpected or unintended consequences. Sometimes there is a real communications mistake and a legitimate claim due to an incomplete or improperly drafted domestic contract or other mistake by the lawyer.

Beyond the communications issues, getting the final document right requires diligent management of the file, a thorough investigation into the client's circumstances, a consideration of relevant law, and the careful drafting of the provisions of the agreement. Lawyers may also find themselves pressured into taking shortcuts due to tight time constraints or clients who want to keep legal fees as low as possible.

The checklists and forms in this toolkit contain points and questions lawyers should systematically consider as they conduct the initial interview on a domestic contract matter and when they meet with the client to review and sign the document.

Following the steps listed in the checklists and forms will make sure nothing is missed, and just as importantly, that there is a paper trail documenting the work that was done and the communications that occurred at the two most critical stages of a domestic contract matter: the initial intake meeting and the review and signing of the agreement. That paper trail can be invaluable in the event a client sues you for malpractice.

There are four documents in the toolkit:

1. **Domestic Contract Matter Intake Form:** This form systematically walks you through all the information you need to gather to prepare a domestic contract.
2. **Domestic Contract Matter Intake Checklist:** This checklist lists the steps and issues that need to be considered at the intake stage.
3. **Post-Meeting Client Assignment Sheet:** This sheet gives the client a list of the information that they will need to collect after the initial meeting.
4. **Domestic Contract Execution Meeting Checklist:** This checklist lists the steps and issues that need to be considered when a client comes in to review and sign a domestic contract.

Use these documents to help reduce your risk of a claim and keep your LAWPRO premiums low.

Acknowledgement: LAWPRO acknowledges the assistance of Dawn Melville of Ballance & Melville in Windsor, Ontario, for her assistance with the creation of the documents in this toolkit.

Disclaimer: The documents in this toolkit include techniques which are designed to minimize the likelihood of being sued for professional liability. The material presented does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.



Domestic Contract Matter Intake Form

All intake interviews should be conducted in person and in the presence of the lawyer.

Date: _____ Start time: _____ End time: _____

Our File No.: _____ Type of Legal Proceedings: _____

Client

Name (full legal name): _____

Address: _____

Identity verification

Copy of identification obtained on: _____
(Copy kept in file)

Identification obtained and verified by photo identification:
Passport: _____

Driver's License DL: _____

Citizenship Card: _____

Background

Phone: Home: _____ Cell: _____ Work: _____

Email: _____ (Confirmed with client is confidential)

Date of birth: _____ Age: _____ Place: _____

Employer: _____

Employer address: _____

Position: _____

Length of employ: _____ Annual gross income: _____

Employment history: _____

Social insurance number: _____ Pension plans: _____

Opposing Side

Husband Wife Statutory Common Law Partner Parent of Child of Relationship

Name of individual: _____

Address: _____ Telephone: _____

Date of birth: _____ Age: _____ Place: _____

Employer: _____

Employer address: _____

Position: _____

Length of employ: _____ Annual gross income: _____

Employment history: _____

Social insurance number: _____ Pension plans: _____

Matrimonial Home

Location: _____ Approximate value: _____

Ownership: Joint Sole Mortgagee: _____

Address of mortgagee: _____

Value of mortgage: _____ Discharge/Renewal date: _____

Separation Details

Date of separation: _____ Place of separation: _____

Details of marriage

Date of marriage: _____ Location: _____ Cohabitation before marriage: _____

Current living arrangements: Living in same home Living separate and apart

Information of Wife

Surname at birth: _____ Name at time of marriage: _____

Marital status at time of marriage: _____

If previously married name of former spouse: _____

Date of divorce from former spouse: _____ Place of divorce: _____

Information of Husband

Surname at birth: _____ Name at time of marriage: _____

Marital status at time of marriage: _____

If previously married name of former spouse: _____

Date of divorce from former spouse: _____ Place of divorce: _____

Children of the Marriage

Name: _____ Date of birth: _____

School attended: _____ Grade level: _____

Child's residence: _____ Length of time child resident: _____

Where are the children living and when do they see the other parent? _____

Current custody arrangement sought: Sole Joint _____

(See page 13 of this booklet to list additional Children of the Marriage, if needed.)

Existing Support Arrangements

Spousal frequency: _____ Amount of payment: _____

Child support frequency: _____ Amount of payment: _____

Other

Any previous court actions: No Yes If yes, explain: _____

Domestic contract: No Yes If yes, explain: _____

Income

Gross weekly pay: _____ Regular wage: _____ Overtime pay: _____

C.P.P.: _____ U.I.C.: _____ Union dues: _____

Disability: _____ Automatic deductions: _____ Pension: _____

Other: _____

Assets

Vehicles: (1) _____ (2) _____

Works of art: _____ Jewellery: _____

Contents of home: _____

Bank accounts: _____ Securities/RRSPs: _____

Life insurance: _____ Other: _____

Debts

(1) _____

(2) _____

(3) _____

Deadlines

Applicable limitation periods:

Other crucial deadlines:

Parenting Affidavit Information

1. Other names used during lifetime:

2. The child(ren) in this case is/are:

Child's full legal name:

Birthdate (d/m/y):

Age:

Full name of parents (if different from intake information):

Name(s) of all people the child lives with now (include addresses if the child does not live with you):

My relationship to the child (specify if parent, grandparent, family friend, etc.):

3. I am also the parent of or have acted as a parent (for example, as a step-parent, legal guardian etc.) to the following child(ren): (include the full legal names and birthdates of any child(ren) not already listed in paragraph 2)

4. I am or have been a party in the following court case(s) involving custody of or access to any child: (Including the child(ren) in this case or any other child(ren). Do not include cases involving a children's aid society in this section. Attach a copy of any custody or access court order(s) or endorsement(s) you have.)

Court location:

Names of people involved in the case:

Names of children:

Court orders made (include dates of orders):

5. I have been a party or person responsible for the care of a child in the following child protection court case(s): (attach a copy of any relevant court order(s) or endorsement(s) you have)

Court location:

Names of people involved in the case:

Name of Children's Aid Society:

Court orders made (include dates of orders):

6. I have been found guilty of the following criminal offence(s) for which I have not received a pardon:

Charge:

Approximate date of finding of guilt:

Sentence received:

7. I am now charged with the following criminal offence(s):

Charge: _____

Date of next court appearance: _____

Terms of release while waiting for trial: (attach copy of bail or other release conditions, if any)

8. To the best of my knowledge, since birth, the child(ren) in this case has/have lived with the following caregiver(s):

9. The child(ren) does not/do not have any special medical, educational, mental health or developmental needs.

The child or one or more of the children has/have the following special needs and will receive support and services for those needs as follows: (if a child does not have special needs, you do not have to include information about that child below)

Medical: _____

Educational: _____

Mental Health: _____

Developmental: _____

Other: _____

Other toolkits and checklists to help minimize risk

LAWPRO resources

ILA Checklist: When providing independent legal advice, this checklist provides you with a handy tool to ensure that you are covering all the bases when discussing the underlying transaction and your client's relationship to that transaction: www.practicepro.ca/ILAChecklist

Non-profit Board Risk Management Checklist: Here are some questions you should ask yourself before serving as a director on the board of a charity or not-for-profit organization: www.practicepro.ca/nonprofit

Vulnerabilities Assessment Chart: Use this chart to help identify and assess your firm's vulnerabilities: www.practicepro.ca/disastercoverage

Employee Departure Checklist: A list of security-related steps you should take when an employee leaves your firm: www.practicepro.ca/EmployeeDeparture

LAWPRO's practicePRO website also has links to numerous resources to help lawyers address a wide variety of practice issues – including sample retainers, a limitations period summary chart and sample generic policies that you can adapt on topics such as law firm privacy. Check them out on the practicePRO practice aids page at www.practicepro.ca/practice/default.asp

TitlePLUS resources

The TitlePLUS website provides lawyers with a number of sample documents (retainer agreements, reporting letters)

that can be easily adapted for specific transactions. Check them out at www.titleplus.ca/resources

Other checklists

CBA Conflicts of Interest Toolkit: A great resource of conflicts related checklists and precedents: www.cba.org/CBA/groups/conflicts/toolkit.aspx

Law Society Lawyer Basic Management Checklist: A practice analysis tool which assists in identifying possible deficiencies in your practice: rc.lsuc.on.ca/jsp/pmg/executiveSummary.jsp



Domestic Contract Matter Intake Checklist

File number: _____ Client name: _____

Initial meeting dates(s): _____ Date checklist completed: _____

With respect to the initial meeting(s) with my client, I am satisfied that:

- The person I am dealing with and calling my client is the named party who is truly at risk and engaged in the legal issues dealt with in the domestic contract.
- Appropriate due diligence for the preparation of the domestic contract was undertaken (e.g., gathered relevant information; obtained disclosure of and reviewed relevant financial information; conducted necessary records and other searches; etc.). See next section.
- An appropriate amount of time was spent discussing all relevant issues that had to be dealt with in the domestic contract.
- Applicable limitation periods and other crucial deadlines were identified, noted for my client and entered into the firm's tickler system.
- My client was not subject to duress or undue influence and is signing freely and voluntarily, without pressure from anyone.
- I clearly explained how I would charge for my services, the billing procedures and gave an estimation of what the total fees for the matter would be.

With respect to gathering information, I required my client to provide to my office the following information and documents (and provided them with direction on obtaining this information where necessary):

- An original marriage certificate (If married).
- Copies of any prior Divorce Orders or Certificates.
- A copy of the original mortgage documents and the most recent statement from the mortgage company or an authorization and direction signed by the client to communicate with the mortgage company.
- Credit bureau disclosure to ascertain any asset or debt obligations not known to client.
- A Ministry of Transportation Sale Package on any vehicles registered in their name.
- The last three years of Income Tax Returns and Notices of Assessment (personal and corporate).
- A draft Financial Statement.
- Supporting documents confirming the existence of a premarital deduction claims.
- An original Authorization & Direction to speak with their accountants, doctors etc., if necessary.
- Any pension statements applicable to client.
- Banking statements from the date the relationship started to the date it ended.
- I provided my client with an Assignment Sheet upon conclusion of the initial interview(s).

With respect explaining the nature and implications of a domestic contract, I am satisfied that I clearly explained the following to my client:

- The services available to assist individuals with relationship issues i.e. counsellors, mediators etc.
- The availability of any support entitlements either spousal or child support and any applicable guidelines.
- How the equalization of net family property is determined versus the common misconception each asset is divided individually.
- How the issue of constructive or resulting trust applies to the client, if applicable.
- The implications of time limitations in seeking an equalization of the parties' net family property.
- The implications of a Domestic Contract versus commencing a legal proceeding.
- The implications of obligations addressed in a domestic contract versus the obligations with a third party creditor.
- The implications of bankruptcy of either party.
- What cannot be addressed in a marriage contract (e.g., future custody considerations).
- The necessity of proper and full financial disclosure.
- Potential challenges to a domestic contract in the future.

With respect to communications between my client and me, I am satisfied that:

- My client has adequate language comprehension skills (written and oral) for us to communicate effectively in our chosen language.
- My client acknowledged and appeared to understand the overall nature and consequences of the domestic contract and the outcomes that are expected to flow from it.
- I explained the possible negative outcomes that could flow from the domestic contract.
- My client understands the final and legally binding nature of the obligations being undertaken and that there are no (or limited) opportunities to withdraw after signing.
- I have told the client of areas where I am not able to give advice and the client should consider retaining another appropriate expert (e.g., accountant, pension or property valuator, etc.).
- I answered all questions that my client asked to my client's satisfaction.

With respect to real and potential conflicts of interest, I am satisfied that:

- My work for this client will not impair the duties of performance that I and other lawyers at my firm have to our other clients.
- My work for this client will not affect the relationships that I and other lawyers at my firm have with our other clients.
- Neither my personal interests nor the interests of my firm will affect my handling of this matter.
- There is no risk of me having and disclosing the confidential information of one client to another, and if necessary, confidentiality screens have been put in place.
- IIA was not required on this matter or my client required and received appropriate IIA.
- There are no conflicts of interest as between my client and past clients I have had.
- Where there are real or potential conflicts, appropriate waivers have been obtained from the affected clients.

With respect to legal issues relating to matters to be dealt with in the domestic contract, I am satisfied that:

- I have sufficient knowledge of the relevant areas of substantive law necessary for the preparation of this domestic contract.
- All relevant substantive law issues have been considered and appropriately dealt with in the domestic contract.
- All appropriate tax issues have been properly considered and addressed, with, if necessary, the help of expert tax advice.

With respect to file management steps taken on this matter:

- I completed a conflicts check for my client and others connected with the matter.
- A matter was created on the firm's systems and a physical file was created.
- I have a signed retainer in the file and it clearly states the scope of the retainer.
- Applicable limitation periods and other crucial deadlines were identified and entered into the firm's tickler system.
- I took notes of my meeting(s) with my client and retained these in the file.
- I docketed the time spent in the initial meeting(s) and phone call(s) with my client on this matter.
- I placed this form in the file.
- I sent an interim reporting letter outlining the issues to be dealt with, the steps to be taken on the matter, and the expected timeframe and cost.

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Post-meeting Client Assignment form

Client Name: _____ Meeting date: _____

Your immediate attention to these tasks will assist us in moving your matter along.

Please contact _____ at _____ or _____ if you have any questions.

Please bring the following items ON OR BEFORE: (insert date) _____

- Retainer in the amount of \$ _____
- My hourly rate is \$ _____. My law clerk is charged out at \$ _____ per hour.
- The Retainer Agreement must be signed prior to the commencement of any legal services.
- Income Tax Returns and Notices of Assessment/Reassessments for the following years: _____

These may be ordered by calling Canada Revenue Agency at 1-800-959-8281

PLEASE CALL IMMEDIATELY AS IT TAKES 2 WEEKS MINIMUM TO RECEIVE

THESE DOCUMENTS AND THE COURT PROCESS CANNOT BE STARTED WITHOUT THEM.

- Any corporate financial statements for the last three year period
- The original marriage certificate or make a request to obtain your original marriage certificate

If you are married in Canada this can be obtained on line at

[http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/007-11078E~1/\\$File/11078E.pdf](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetFileAttach/007-11078E~1/$File/11078E.pdf)

- A copy of your current pay stubs (always updated when you have an appointment)
- Completed draft Financial Statement (please note that there is no need to total)

This form must be completed in its entirety.

Do not just say see attached documents

- Most recent pension statement: _____
- Any Deed or Mortgage documents for any real property
- Please obtain a copy of any bank statements confirming your accounts for the date of marriage and the date of separation.
Bank Statements to be provided _____
- A copy of any properties of attorney for personal care or property
- A copy of your most recent Last Will & Testament
- A copy of all current Orders of the Court and any Minutes of Settlement
- A copy of any Domestic Contract signed by your client
- Ministry of Transportation Sale Package on any vehicle registered in your name
- Credit bureau disclosure to ascertain any asset or debt obligations you may not be aware of
- Any supporting documents confirming the existence of a premarital deduction claim
- Additional Documents _____

4

Domestic Contract Review and Signing Checklist

File number: _____

Client name: _____

Date contract signed: _____

Date checklist completed: _____

With respect to my instructions and preparing to draft the domestic contract, I am satisfied that:

- The person I am dealing with and calling my client is the named party who is truly at risk and engaged in the legal issues dealt with in the domestic contract.
- Appropriate due diligence for the preparation of the domestic contract was completed (e.g., gathered relevant information; obtained disclosure of and reviewed relevant financial information; conducted necessary records and other searches; etc.). See next section.
- The document was cross-checked with notes in the file to ensure it reflects my client's instructions and desired outcomes.
- An appropriate amount of time was spent investigating and considering all relevant issues that had to be dealt with in the domestic contract.
- My client was not subject to duress or undue influence and is signing freely and voluntarily, without pressure from anyone.

With respect to gathering information, I required my client to provide to my office the following information and documents (and provided them with direction on obtaining this information where necessary):

- An original marriage certificate (If married)
- Copies of any prior Divorce Orders or Certificates
- A copy of the original mortgage documents and the most recent statement from the mortgage company or an authorization and direction signed by the client to communicate with the mortgage company
- Credit bureau disclosure to ascertain any asset or debt obligations not known to client
- A Ministry of Transportation Sale Package on any vehicles registered in their name
- The last three years of Income Tax Returns and Notices of Assessment (personal and corporate)
- A draft Financial Statement
- Supporting documents confirming the existence of a premarital deduction claim
- An original Authorization & Direction to speak with their accountants, doctors etc., if necessary
- Any pension statements applicable to client
- Banking statements from the date the relationship started to the date it ended
- I provided my client with an Assignment Sheet upon conclusion of the initial interview(s).

With respect explaining the nature and implications of a domestic contract, I am satisfied that I clearly explained the following to my client:

- The services available to assist individuals with relationship issues i.e. counsellors, mediators etc.
- The availability of any support entitlements either spousal or child support and any applicable guidelines
- How the equalization of net family property is determined versus the common misconception each asset is divided individually

- How the issue of constructive or resulting trust applies to the client, if applicable
- The implications of time limitations in seeking an equalization of the parties' net family property
- The implications of a domestic contract versus commencing a legal proceeding
- The implications of obligations addressed in a domestic contract versus the obligations with a third party creditor
- The implications of bankruptcy of either party
- What cannot be addressed in a marriage contract (e.g., future custody considerations)
- The necessity of proper and full financial disclosure
- Potential challenges to a domestic contract in the future
- Upon execution, I had my client initial each page
- I had the client acknowledge receipt of copy of the domestic contract and my final reporting letter and account.

With respect to communications between my client and me, I am satisfied that:

- My client has adequate language comprehension skills (written and oral) for us to communicate effectively in our chosen language.
- I explained how I would charge for my services, the billing procedures and gave an estimation of what the total fees for the matter would be.
- My client reviewed a draft of the domestic contract before signing it.
- The key provisions of the domestic contract were clearly explained to my client, including unusual and custom provisions.
- My client acknowledged and appeared to understand the key provisions of the domestic contract, as well as the overall nature and consequences of the domestic contract and the outcomes that are expected to flow from it.
- I explained the possible negative outcomes that could flow from the domestic contract, if any.
- My client understands the final and legally binding nature of the obligations being undertaken and that there are no (or limited) opportunities to withdraw after signing.
- I have told the client of areas where I am not able to give advice and the client should consider retaining another appropriate expert (e.g., accountant, pension or property valuator, etc.).
- I answered all questions that my client asked to my client's satisfaction.
- The client clearly confirmed that the domestic contract reflects and is consistent with his/her instructions.
- All required follow-up steps to be undertaken by my client are noted in the domestic contract and/or a reporting letter.

With respect to the drafting of the domestic contract and the use of precedents, I am satisfied that:

- The domestic contract is sufficiently well-drafted to accomplish my client's objectives.
- All required clauses are in the domestic contract, including all required standard boilerplate clauses.
- There are no ambiguities or inconsistencies as between the clauses in the domestic contract.
- The terms of the agreement are both certain and enforceable.

With respect to real and potential conflicts of interest, I am satisfied that:

- My work for this client will not impair the duties of performance that I and other lawyers at my firm have to our other clients.
- My work for this client will not affect the relationships that I and other lawyers at my firm have with our other clients.
- Neither my personal interests nor the interests of my firm will affect my handling of this matter.

- There is no risk of me having and disclosing the confidential information of one client to another, and if necessary, confidentiality screens have been put in place.
- IIA was not required on this matter or my client required and received appropriate IIA.
- There are no conflicts of interest as between my client and past clients I have had.
- Where there are real or potential conflicts, appropriate waivers have been obtained from the affected clients.

(If applicable) I took the following steps as the client wanted to sign a domestic contract which I believe is contrary to his/her interests:

- Prepared an opinion letter setting out my concerns in relation to the domestic contract that I believe to be contrary to his/her interests and mailed it out at least fourteen days before the scheduled appointment to sign.
- Had my client review the opinion letter in the lobby before meeting with me to sign it.
- Had my assistant attend the meeting with the client and asked in the presence of my assistant if my client reviewed the opinion letter.
- Had my client initial each page of the opinion letter.
- Offered the client the opportunity to meet with alternate legal counsel.
- Asked my client the following questions after having reviewed the opinion letter and in the presence of a third party
 - Do you want to sign this domestic contract after having reviewed my opinion letter?
 - Do you understand everything in the opinion letter?
- Had the client sign the domestic contract in the presence of another individual and asked the witness to make notes immediately after the meeting.

With respect to legal issues relating to matters dealt with in the domestic contract, I am satisfied that:

- I have sufficient knowledge of the relevant areas of substantive law necessary for the preparation of this domestic contract.
- All relevant substantive law issues have been considered and appropriately dealt with in the domestic contract.
- All appropriate tax issues have been properly considered and addressed, with, if necessary, the help of expert tax advice.

With respect to file management steps taken on this matter:

- I completed a conflicts check for all clients and others connected with the matter.
- A matter was created on the firm's systems and a physical file was created.
- Applicable limitation periods and other crucial deadlines were identified and entered into the firm's tickler system.
- I have a signed retainer in the file and it clearly states the scope of the retainer.
- I took notes of my meeting(s) with my client and retained these in the file.
- I docketed the time spent in the initial and subsequent meetings and phone calls with my client on this matter.
- I docketed the time spent drafting the domestic contract.
- I docketed the time spent reviewing the domestic contract with the client when it was signed.
- I placed this form, various draft versions of the domestic contract and a copy of the final version in the file.
- I sent a reporting letter outlining the terms of the domestic contract, resulting outcomes and obligations assumed by my client together with my final account.

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Additional Forms

Children of the Marriage

Name: _____ Date of birth: _____

School attended: _____ Grade level: _____

Child's residence: _____ Length of time child resident: _____

Where are the children living and when do they see the other parent? _____

Current custody arrangement sought: Sole Joint _____

Name: _____ Date of birth: _____

School attended: _____ Grade level: _____

Child's residence: _____ Length of time child resident: _____

Where are the children living and when do they see the other parent? _____

Current custody arrangement sought: Sole Joint _____

Name: _____ Date of birth: _____

School attended: _____ Grade level: _____

Child's residence: _____ Length of time child resident: _____

Where are the children living and when do they see the other parent? _____

Current custody arrangement sought: Sole Joint _____

Name: _____ Date of birth: _____

School attended: _____ Grade level: _____

Child's residence: _____ Length of time child resident: _____

Where are the children living and when do they see the other parent? _____

Current custody arrangement sought: Sole Joint _____

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