
A Marriage Under Sharia Law Can be Valid in Ontario

Under Ontario law, when a couple separates, a claim may be made pursuant to the *Family Law Act* for an equalization of net family property. This equalization scheme, however, requires that the parties be married spouses as defined in the *Marriage Act*. Under the *Marriage Act*, no marriage may be solemnized except under the authority of a license issued in accordance with the *Marriage Act* or the publication of bans. Consequently, some have questioned the legitimacy under Ontario law of marriages entered into by way of wedding ceremonies conducted in accordance with Sharia law.

This concern was illustrated in the recent case of *Isse v. Said*, in which a couple had married in an Islamic wedding ceremony in accordance with Sharia law only; the couple did not obtain a marriage licence under the *Marriage Act* and, therefore, the marriage was not registered in Ontario.

In determining whether the parties were married spouses as set out in the *Marriage Act*, thus permitting a claim for an equalization of net family property, the Court reviewed the limited exception to requiring a marriage licence and registration as set out in the Act. To qualify as a marriage, the following requirements must be met:

- 1) the marriage ceremony must have been solemnized in good faith;
- 2) the marriage must have been intended to be in compliance with the *Marriage Act*,
- 3) neither party may have been under a legal disqualification to

contract marriage; and

- 4) the parties must have lived together and cohabitated as a married couple after the solemnization.

In the case of this couple, it had been the wife's intention that the marriage be in compliance with the law. The Court thus deemed the couple to have a valid marriage permitting a claim for the equalization of net family property under the *Family Law Act*. This is an important case for the Islamic community in Ontario as it recognizes important property rights for couples who are married in religious ceremonies but, through inadvertence, do not register the marriage. So long as the spouses believe that they were married in accordance with the law, they should still have the right to property division under the *Family Law Act*.

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