
When Is a Cottage a Matrimonial Home?

In *Egan v. Burton* [2013] O.J. No. 2408, the parties had been married for twenty years with the husband having brought into the marriage a cottage which he had owned prior to the parties' marriage. The husband paid for all the expenses for the upkeep and improvements to the cottage. The wife did not contribute to the operation or maintenance of the cottage during their marriage aside from some ordinary housekeeping. The parties had resided at the cottage from May until September almost every year of their marriage.

At separation the parties disagreed upon whether the cottage constituted a second matrimonial home. In this case the Court held that the evidence clearly showed the parties had used the cottage when they were spouses. The court found that:

“family residence” must mean some-thing more than two spouses using the cottage. I consider that evidence of the intention of the parties, at the time of their use, must be part of the analysis. To do otherwise would be to undermine the purpose of the section which is remedial and intended to achieve a fair result where the parties have treated a cottage or a second home as a family residence with both parties contributing in one way or the other as one would expect a family home - which was registered only in the name of one of the parties - and after separation for the other party to be told you have no interest.”

The court held that the wife never treated the cottage as a family residence. Unlike the matrimonial home, she made no contribution to the cottage. Therefore, the Court held that the cottage was not a matrimonial home.

This case is a significant departure from prior cases in which the courts have generally found a cottage, vacation property and even a second occasionally-used residence to be a matrimonial home. For example, in *Oliver v. Oliver-Estate* 2012 ONSC 718, a Toronto condo was found to be a second matrimonial home. In that case the condo was only being used by the husband when he came to Toronto for medical treatments or as a transit point if the couple was flying somewhere from Toronto.

At this time there appears to be a conflict in the jurisprudence on the issue of determining whether a cottage is a second matrimonial home.

It will be interesting to see how the courts deal with this issue in the future.

Couples should give consideration to whether or not there is a need for a marriage contract prior to getting married. It would be prudent to meet with a family law lawyer to discuss your situation and determine whether a marriage contract would be appropriate. Marriage contracts are especially important if one party owns a home or cottage and is bringing that asset into the marriage, as it will likely become a matrimonial home. Unlike other assets brought into the marriage, at separation, a spouse is not entitled to a date of marriage deduction in the event that home or cottage is still a matrimonial home on the date of separation. For example, if an individual has \$100,000.00 in a bank account on the date of the marriage, and another individual has \$100,000.00 equity in a home on the date of marriage, and that home is still a matrimonial home on the date of separation, then the individual with the bank account will be given a date of marriage credit of \$100,000.00 whereas the individual with the equity in the home will not be provided with a date of marriage credit. If the intention is to keep a home or cottage separate or to obtain credit for the value of the property coming into the marriage, one should meet with a family law lawyer to discuss having a marriage contract prepared.

In the *Egan v. Burton* case, if the spouses had prepared a marriage contract prior to getting married, they could have confirmed their intentions for the cottage and then likely avoided the high costs of litigating that issue.

Our lawyers in our Family Law Department would be pleased to assist anyone wishing to obtain more information on Marriage Contracts or Cohabitation Agreements.

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