

DSF NEWS

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DEVRY SMITH FRANK LLP NEWSLETTER

SPRING 2019 ISSUE

HOW CAN I OBTAIN CUSTODY OF THE FAMILY PET IN MY DIVORCE? MY SOON-TO-BE EX-SPOUSE IS KEEPING MY PET AWAY FROM ME

BY JOHN P. SCHUMAN | MARCH 27, 2019



Under [the Family Law Act](#), married spouses share in the value of each other's property, but only own jointly items which they purchased in their joint names. It therefore follows that the spouse who can prove to have "title" to the pet will be the spouse to whom custody of the pet will be granted.

Where pedigree papers exist, the legal owner is the individual named in the pedigree document or in any other document that indicates to whom the pet belongs, failing which, title generally vests in whomever paid for the pet. Ownership does not change, regardless of whether the spouses are married or divorced.

You may initiate court proceedings, should your non-owner spouse refuse to turn the pet over to you, as the established owner. Under the [Rules of Civil Procedure](#), the Court is empowered to order the Sheriff's office to go to the residence of your non-owner spouse to recover items that are proven to belong to you.

The situation becomes even more complex if you and your spouse jointly own the pet. You must bring an application under [the Family Law Act](#) for a determination that you are the pet's rightful, sole owner. This application is based on the principles of equity rather than on title. You must prove that you should be granted custody because you contributed more to the value of the pet than did your spouse, or that you should be granted custody because you will better "preserve the asset".

The proceedings may be nuanced should one spouse not wish to buy out the other's ownership interest in the jointly purchased pet. In that case, the judge is likely to order that the pet be sold on the open market and that the proceeds of sale divided between its joint owners. Or the judge may order that either party can bid for the pet, which will be sold to the higher bidder. The judge may also order that neither party can try to buy the pet, if that would be best for all concerned.

While Family Arbitration might be one avenue, Ontario's [Arbitration Act](#) requires that assets acquired during a marriage, be divided according to the Family Law Act and not according to the parties' instructions. Your best option is therefore likely to try to work something out with your spouse through negotiation, mediation or collaborative practice, where the needs of the pet can come first.

For assistance with the division of assets during a divorce or separation, contact our experienced and certified specialist in family law, John Schuman at 416-446-5080, or by email at john.schuman@devrylaw.ca.

Under Ontario's current Family Law legislation, pets, of any sort, are "property", such as furniture, cars or bank accounts. Judges do not decide matters based on the "best interests of the pet", as they do parenting issues, which are based on the "best interests of the child".

Rather, the issue of pet custody is determined by the principles of property division in separation and divorce. In Ontario, marriage does not grant spouses an automatic right to ownership of each other's possessions.

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CHANGES TO IMPAIRED DRIVING LAWS

BY DAVID M. SCHELL | March 19, 2019



The following are some highlights from a blog regarding the changes the federal government brought to impaired driving laws in 2018.

Background

Bill C-46 was passed in 2018 and brought significant changes to impaired driving laws in Canada. Bill C-46 repealed sections 249 to 261 of the Criminal Code and replaced it with Part VIII.1, sections 320.11 to 320.4.

The New Rules

The changes include three new offences referring to a blood drug concentration (“BDC”) over the legal limit. In addition, changes were made to the offences of operating while impaired, operating while “over 80” and refusal to comply with a breath demand.

Elements of all other transportation offences appear to be substantially similar to their previous versions. The new provisions also introduce some new and higher mandatory minimum fines, and some higher maximum penalties for impaired driving offences.

“Impaired” Operation

Operating a vehicle with a blood alcohol concentration (BAC) equal to or exceeding 80 mg of alcohol in 100 ml of blood within two hours of driving is an offence. Though the wording of the offence has changed slightly, this section remains as it was under the previous version of the law. It is an offence to operate a conveyance (vehicle) if a person’s ability is impaired by alcohol, a drug, or a combination of alcohol and a drug “to any degree”.

The new formulation of the offence “operating at or over 80 within two hours of driving” changes the timeframe within which the offence can be committed and is an attempt by the government to eliminate the bolus drinking defence and the intervening drink defence.

The bolus drinking defence arises when a driver claims to have consumed alcohol just before driving and/or while driving. Although the accused would admit that their BAC was “over 80” at the time of testing, they would claim that the alcohol was still being absorbed and that they were not “over 80” at the time of driving.

The intervening drink defence arises when a driver consumes alcohol after driving but before providing a breath sample. This defence was most often seen after a motor vehicle collision, with the driver claiming that they were settling their nerves post-accident.

The only situation in which a driver can now rely on intervening consumption in order to avoid a conviction, is captured in subsection 320.14(5) (or subsections (6) and (7) for drug consumption). The following conditions are now required for the defence.

- The person consumed alcohol after ceasing to operate the conveyance;
- The person had no reasonable expectation that they would be required to provide a sample of breath or blood; and,
- Their alcohol consumption is consistent with their BAC at the time the samples were taken and with their having had a BAC of less than 80 at the time of operation.

Drug-Impaired Driving

There are three new criminal offences related to drug-impaired driving or when a motorist is impaired by drugs or a combination of drugs and alcohol.

- Section 320.14(1)(c) makes it an offence to have a BDC equal to or over the prescribed limit within two hours of operating a conveyance.
- Section 320.14(1)(d) makes it an offence to have a combined BAC and BDC equal to or over the prescribed limit within two hours of operating a conveyance.
- Section 320.14(4) makes it a less serious offence to operate a conveyance with a lower level of drug impairment than prescribed by section 320.14(1)(c), but at a level which is equal to or over an amount prescribed by regulation.

Charter and other Concerns

Numerous aspects of the new impaired driving regime will face scrutiny under the *Canadian Charter of Rights and Freedoms* (the “Charter”). It is anticipated that cases involving these

offences will be challenged in the courts and that the constitutionality of the new provisions will eventually be decided by the Supreme Court of Canada. There are several aspects of the new laws likely to be debated in the courts.

Mandatory Alcohol Screening – section 320.27(2)

Under the old provisions, the police had to have a reasonable suspicion of alcohol in the body to be able to demand a roadside alcohol screening. A significant change with the new law is the introduction of mandatory alcohol screening under section 320.27(2). With this new section, a police officer who has lawfully stopped a driver is able to demand that the driver provide a breath sample into an Approved Screening Device without needing to have a reasonable suspicion that the driver has alcohol in the body.

This provision has drawn significant criticism from the criminal defence bar and civil liberty advocates. Critics of the provision argue that it amounts to an arbitrary use of police power. Taking away the “reasonable suspicion” previously required by the police will be challenged as a violation of one’s Charter rights, notably their right to be free from unreasonable search and seizure.

The New Language “Within Two Hours of Operating a Conveyance”

This new provision making it an offence to have a certain BAC and or BDC within two hours of driving has also drawn heavy criticism. Criminalizing drinking after one has been driving will likely be challenged in the courts. In attempting to take away previously used defences such as bolus drinking and the intervening drink defence, the federal government is potentially criminalizing individuals who have not been drinking and driving. At the very least, the new section appears to put an onus on the public under sections 320.14 (5), (6) and (7) to show several things, including that they started drinking and/or consuming drugs after they drove and that they had no reasonable expectation they would be required to provide a breath sample.

Do the new offences of “BDC over a prescribed limit” actually catch those who are impaired as it relates to cannabis?

The new prescribed limits for cannabis/THC are controversial. Critics have argued that there lacks a clear link between the level of THC in the blood and the degree of impairment, as there is with alcohol. Competing scientific evidence and argument over whether the present prescribed levels of THC blood concentration actually establish “impairment” are likely.

For assistance with respect to impaired driving charges or any other criminal matter, please contact criminal defence lawyer David Schell at 416-446-5096 or by email at david.schell@devrylaw.ca.

IDENTIFICATION REQUIREMENTS FOR REAL ESTATE TRANSACTIONS

BY ROBERT ADOURIAN | JANUARY 18, 2019



An important part of preparing for a real estate transaction is making sure that you have sufficient identification documents to satisfy the requirements of your realtor, lawyer and mortgage lender.

Each of these professionals will require that you provide documents to verify your identity.

The usual requirement is two pieces of valid and unexpired identification documents, one of which must be photo identification. Examples of acceptable photo identification are an Ontario drivers licence, an Ontario Identification Card, or a Canadian Passport.

The second piece of ID could be one of the

foregoing, a Canadian Social Insurance Card or a credit card issued by a major Canadian financial institution. Your lawyer will document the details from the required I.D, and will also make note of your occupation and the name, address and telephone number of your employer.

The Non-Resident Speculation Tax imposes a 15% tax on the purchase or acquisition of an interest in residential real estate by non-residents of Canada in the Greater Golden Horseshoe Region (GGH). This includes the following geographic areas:

- City of Barrie
- County of Brant
- City of Brantford
- County of Dufferin
- Regional Municipality of Durham
- City of Guelph
- Haldimand County
- Regional Municipality of Halton
- City of Hamilton
- City of Kawartha Lakes
- Regional Municipality of Niagara
- County of Northumberland
- City of Orillia
- Regional Municipality of Peel
- City of Peterborough
- County of Peterborough
- County of Simcoe
- City of Toronto
- Regional Municipality of Waterloo

- County of Wellington, and
- Regional Municipality of York

In order to be exempt from this tax, individuals must provide evidence that they are Canadian citizens or Permanent Residents of Canada. Your lawyer will require that you sign a sworn declaration to this effect, and you may also be required to provide proof of your status in the form of a Canadian passport, Canadian citizenship card or Permanent Resident Card.

Prior to entering into a contract to buy or refinance real estate, you should consult with a lawyer and make sure that you have all the documentation required to satisfy the requirements of your realtor, lawyer and mortgage lender.

At Devry Smith Frank LLP, we are well-equipped to handle your real estate transaction. We provide promptness, precision and understanding to all our clients, engaging with you from the beginning stages of your purchasing journey to the closing of your dream property. We pride ourselves on our ability to clarify vague or unclear legal terminology, and to communicate with our clients in clear and simple terms.

For experienced assistance with both commercial and residential real estate, contact Robert Adourian at 416-446-3303 or by email at robert.adourian@devrylaw.ca or Louis Gasbarre at 416-446-3303 or by email at louis.gasbarre@devrylaw.ca

EVENTS

THE ARMENIAN MISSIONARY ASSOCIATION OF CANADA MAY 5, 2019



Robert Adourian was a speaker at the 35th Anniversary Banquet for the Armenian Missionary Association of Canada on May 5, 2019.

SPG PANEL DISCUSSION:



Our corporate commercial lawyer, Elisabeth Colson, is part of a new speaker series, offering you the opportunity to attend a panel discussion followed by the opportunity for one-on-one intimate conversations with a group of dedicated, highly skilled professionals, each of whom have decades of experience serving the needs of their business-owner clients.

The initial SPG discussion was held on April 11, 2019. We will be announcing future panel discussions on our website.

WILLS AND POWER OF ATTORNEY SEMINAR MAY 16, 2019

Great ideas • New perspectives • In your community

Join us to learn more about
LIFE INSURANCE
PRESENTED BY:
JANET HAMPARIAN, Sun Life advisor
WILLS & POWER OF ATTORNEY
PRESENTED BY:
ROBERT ADOURIAN, Lawyer
Devry Smith Frank

THURSDAY, MAY 16 2019 • 7:00 PM
Armenian Community Centre
AMS Toronto Roussina Chapter
Social Services Committee
45 Hallcroft Place
North York, Ontario M2J 4Y4
Tell us you're coming!

Janet Hamparian
Sun Life Financial advisor
Call: 416-436-2912
janet.hamparian@sunlife.com
sunlife.ca/janet.hamparian
Life's brightest under the sun

Sun Life Financial

Robert Adourian will be presenting at this seminar on May 16, 2019 at the Armenian Community Centre.

DSF IS GROWING



MASON MORNINGSTAR, B.A., J.D.

Mason Morningstar joined the Toronto family law group at Devry Smith Frank *LLP*.

Mason graduated from Osgoode Hall Law School with a Juris Doctor in 2017, and was called to the Ontario Bar in 2018. During his time at Osgoode, Mason volunteered with the Family Law Project, where he assisted hundreds of low-income clients draft court materials and navigate the litigation process.



ANDREINA MINICOZZI, B.A. (Hons.), M.A., J.D.

Andreina Minicozzi joined the Whitby family law group at Devry Smith Frank *LLP*.

Andreina is an experienced family law lawyer with a shining track record. She graduated summa cum laude at York University with a major in political science. She later completed her law degree at the University of Ottawa and a Masters' degree from the Norman Patterson School of International Affairs (NPSIA) with an M.A. and J.D. designation in 2013.



NICHOLAS REINKELUERS, B.A., J.D.

Nicholas Reinkeluers joined the Toronto commercial litigation group at Devry Smith Frank *LLP*.

Prior to joining the firm, Nicholas practiced at a leading litigation firm in downtown Toronto. Nicholas has represented clients in proceedings before the Ontario Small Claims Court, Superior Court of Justice, Divisional Court, Court of Appeal, and various administrative tribunals.



LOUIS A. GASBARRE, B.A., LL.B., LL.M.

Louis A. Gasbarre joined the Toronto residential and commercial real estate law group at Devry Smith Frank *LLP*.

Prior to joining the firm, Louis practiced as an Associate within a boutique firm, with an emphasis on real estate law. His practice encompasses a wide variety of real property-related matters with a focus on the purchase and sale of new homes, condominiums, re-sales, commercial real estate, private financing, institutional mortgages and leasing.



AMANDA HOY, B.A., J.D.

Amanda Hoy joined the Whitby corporate law and real estate law groups at Devry Smith Frank *LLP*.

Amanda completed her law degree at Michigan State University College of Law in 2015. While attending Michigan State, she was a member of the Canadian Legal Association, an organization which provides support and mentoring services for incoming and current Canadian students attending Michigan State University Law.



SYED NIZAMI, B.A., J.D.

Syed Nizami joined the Toronto immigration law group at Devry Smith Frank *LLP*.

Syed articulated in the firm's Toronto office and returned to the firm as an associate. He obtained his Bachelor's degree in philosophy from the University of Toronto in 2013 and received his law degree from Thompson Rivers University in 2017.



ARASH KEYVANI, B.A. (Hons.), J.D.

Arash Keyvani joined the Whitby family law group at Devry Smith Frank *LLP*.

Arash obtained his Honours Bachelor of Arts in Psychology from York University, where he graduated summa cum laude and was a member of the Dean's Honour Roll. His honours thesis explored the interaction between psychology and law. Arash received his Juris Doctor from the University British Columbia and was called to the Bar in 2018.

DSF IN THE COMMUNITY

COLDEST NIGHT OF THE YEAR CHARITY EVENT FEBRUARY 23, 2019



Once again, on Saturday, February 23, 2019 the administration staff of Devry Smith Frank *LLP* participated in the Coldest Night of the Year charity event.

The Coldest Night of the Year is a family-friendly walk that raises money for charities serving hungry, homeless, and hurting people in our community.

MACLAREN BLACK TIE GALA APRIL 12, 2019



Devry Smith Frank *LLP* was a Gold Sponsor for the MacLaren Black Tie Gala, held in Barrie on April 12, 2019. The MacLaren Black Tie Gala raises \$80,000 annually to directly support the MacLaren Art Centre's programs for children and youth – at the gallery, in schools, and throughout the community. Each year, the MacLaren Art Centre reaches more than 20,000 young people, including 7,400 children who take part in VanGo, a program offered across both school boards which brings regional artists into classrooms across Simcoe County for hands-on art experiences.

The Gala was held in the MacLaren's Carnegie Room, perhaps the most beautiful event space in Barrie. One hundred and seventy guests attended, and more than two dozen local and regional businesses participate as sponsors. It is always a fun night, and inspired by this year's theme of Braveheart, the dancing went on to the wee hours.

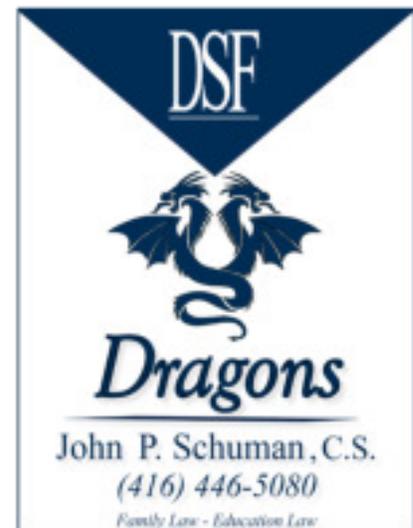
FUNDRAISING AT DSF



Thanks to DSF staff for supporting our Annual St. Valentine's Day Bake Sale, in support of our ongoing fundraising for the Christmas Hamper & Toy Drive.

All cookies, cupcakes, cake pops, gift bags and cards were donated by our creative staff. We raised \$303 - A delicious success!

DSF DRAGONS SPONSORSHIP



Devry Smith Frank *LLP* will be sponsoring local soccer team, the DSF Dragons, during the weekly summer play-offs this year.

Between the months of May and September, join some of DSF's team members and cheer for our brave little Dragons!