Drafting Domestic Contracts

Prepared For: Legal Education Society of Alberta
Domestic Contracts

Presented by:
John Evans
Stringam Denecky LLP
Medicine Hat, Alberta

For presentation in:
Edmonton, Alberta – October 28, 2015
Calgary, Alberta – November 4, 2015

DRAFTING DOMESTIC CONTRACTS

DRAFTING CONSIDERATIONS FOR DOMESTIC CONTRACTS

You have now received complete instructions from your client regarding a proposed Agreement; whether it be a Prenuptial Agreement, Post-Nuptial Agreement, Cohabitation Agreement, or a hybrid Agreement. You have gathered and reviewed the appropriate financial disclosure. You have reflected on how the applicable and relevant legislation and common-law is affected by the proposed Agreement and how the proposed Agreement is affected by the applicable and relevant legislation in common-law. You have weighed your professional responsibility against the competing responsibility to your clients and your client's concern regarding the costs of the proposed Agreement and the speed in which the proposed Agreement is completed.

You are now ready to draft a proposed Agreement, the purpose for which is to protect your client's interests and provide some certainty regarding finances at some future date and the passing of some future triggering event or events. Your job is to protect your client from foreseeable future events, and to some degree unforeseeable future events without the advantage of a crystal ball. Legislation and common-law can change. You do not know when or necessarily why, nor the extent of these inevitable changes. These changes in legislation may affect adversely the Prenuptial, Post-Nuptial, Cohabitation, or hybrid Agreement you drafted for your client. The question that should come to all of our minds is can we protect our client? The answer to your question is "yes", but we must be cautious.

DRAFTING THE AGREEMENT

The common and consistent theme gleaned from a review of texts and articles written on the subject matter of drafting domestic contracts is that every Prenuptial, Post-Nuptial, Cohabitation or hybrid Agreement is unique. The Parties and their unique facts and their reasons for entering into these agreements must be crafted into the agreement specific to the parties. One should be cautious in blindly following precedents, as these precedents may not accurately reflect what is wanted by the parties or the specific needs of the parties.