

L E G A L E Y E

by Michael Bergman

Members of the film community in Ontario, along with other Ontarians, are now finding a new meaning to family planning.

The coming into force of the Ontario Family Law Act has radically altered the circumstances of property and financial planning between spouses. Overnight all spouses whose common habitual residence is in Ontario and regardless of their circumstances find themselves subject to a kind of "community of property."

Under the former Ontario Family Law Reform Act, partners in a broken marriage could demand the right to the division of the family assets. These assets were largely limited to obvious familial necessities such as furniture, utensils and other objects closely connected with family life. Exceptionally a court could award one spouse the ownership or compensation for the contribution to the acquisition of a non-family asset.

Under the new Act, all this is changed. On the separation of spouses, their divorce, the declaration of the nullity of their marriage or on the death of one of them, the property of both spouses will be analyzed and valued into two pools called Net Family Properties. The spouse who owns the Net Family Property of the least worth will be entitled to receive one-half the difference between the more valuable Net Family Property and the lesser one. This mathematical process will effect an equalization between the value of each spouse's Net Family Property. Put simply, on separation, divorce or death, each spouse will receive fifty percent of the value of the property acquired by both spouses during the marriage.

The notion of property involved is quite broad. It includes interests in property both present or future, property over which one spouse has a power of appointment or power of revocation. It does not, however, include property acquired by gift or inheritance, damages for personal injuries, life insurance benefits or property excluded in virtue of a so-called domestic contract. Net Family Property is determined after deducting a spouse's debts and liabilities and the value of property other than the matrimonial home which that spouse owned on the date of marriage.

Although the statute seeks in principle the equalization of Net Family Property, a court does have the power to make an unequal assessment taking

into account such matters as the failure to disclose debts, the reckless incurring of debts in bad faith, intentional depletion of property, the fact that one spouse has incurred a disproportionate share of debts than the other and the provisions of a written agreement other than a domestic contract.

The spouse with the more valuable Net Family Property will be required to pay equalization either in the form of money or through the transfer of property. In cases of hardship, a court may order the payment of the equalization amount by way of instalments over a period of not greater than 10 years.

From this description it should be apparent even to the lay person that the breakup of a marriage in Ontario can have very important property effects. The same can be said of a devolution of property on death. Under this regime the surviving spouse will be required to make an important choice, either accept the equalization payment under the Net Family Property scheme and renounce the benefits of any legacies found in the deceased's will or devolving to the surviving spouse in virtue of the laws which apply in the absence of a will, or refuse the Net Family Property equalization and accept the legacies in the deceased's will or devolving in the absence of such a testament.

Spouses who do not find these concepts of family property comforting can try to avoid them by concluding what the statute calls a 'domestic contract.' This is a written agreement, signed by the parties and witnessed by subscribing witnesses, setting out how the parties want their properties dealt with in the event of a breakdown of the marriage or death. This agreement should normally be written with the assistance of legal counsel. Although these domestic contracts are binding and can supercede the rules mentioned above, they nevertheless are not iron-clad. They can be avoided for legal reasons or if one of the parties did not understand the nature or consequences of the agreement or the extent of the other party's assets or debts. Furthermore, these domestic contracts cannot affect the rights of the spouses to the matrimonial home.

Members of the film community in Ontario are no more immune to marriage breakdown than their fellow citizens. Indeed some may say that

filmmakers are more susceptible to this problem. Whether or not this is so, filmmakers have special concerns with the community property concept arising from the fact that much of their activity is highly speculative. Many filmmakers sometime in their career attempt to write and sell their own scripts or pursue embryonic projects with the hope of producing it themselves or selling it to a production company that can. In all of these endeavours it is important to the filmmaker to maintain a firm ownership grip on the project so that he or she will reap the financial benefits once it comes to fruition and to assure investors that the filmmaker is dealing with that all the rights to the project have been cleared and are above question.

An Ontario filmmaker's partners and investors may now become more leery of scripts and projects especially with regard to the latter these which are not sponsored by corporations. The possibility that the writer's spouse can

suddenly become entitled to a portion of the copyright or a licence or even the royalties may influence investors to seek out writers whose own "house" is in order and not on the verge of breakdown.

Consider too the problem of a filmmaker who has a project that is just coming together although not quite all the way there. How does one value such a project in the Net Family Property situation? Is it to be valued on its real worth, its potential worth or by some other means? The answers to these questions are quite difficult, and they certainly have an effect on how much one spouse may have to pay or may receive in marriage breakdown situations. These kinds of problems are not purely speculative. Among the legal community there is a real debate as to whether or not a lawyer or doctor's licence to practice could fall in and be valued in the Net Family Property pool.

While persons contemplating marriage may have fewer qualms about concluding a domestic contract, those al-

ready married may find it a rather tacky enterprise. After all, it is possible to view the request for a domestic contract as an indication of lack of faith in the other spouse. Given this, not a few will find that loving their property often means loving their spouse.

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Dinesen's Monkey

TORONTO - Following two years of negotiations, Toronto film director Bob Schulz Productions has acquired the movie rights to Isak Dinesen (Karen Blixen) of *Out Of Africa* fame's short story, "The Monkey". The story is from *The Seven Gothic Tales*, which will appear in the 60th anniversary edition of the Book of the Month Club. Schulz Productions notes in a release that "The Monkey" could be the source of a new Canadian motion picture."

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The Department of Cinema and Photography of the Faculty of Fine Arts announces a probationary tenure-track position in FILM ANIMATION at the starting rank of Assistant Professor, to begin with the academic year 1986-1987. Duties include full-time teaching responsibilities within our graduate Major and Minor in Film Animation, and a contribution to the administration of our integrated Film Animation and Film Production programmes. The successful candidate will also be expected to maintain artistic productivity during the appointment.

Teaching experience, a diversified artistic background, and bilingualism will all be considered assets, as will such possible qualifications as expertise in relevant areas of Film Production like experimental cinema or optical printing, etc.

We are looking for a creative person and inspired teacher-artist who will contribute to the development of one of the leading university programmes in Film Animation in Canada and give it a sense of artistic and educational identity and direction. In accordance with Canadian Immigration requirements, this advertisement is directed to Canadian citizens and permanent residents.

Vitae and enquiries should be addressed to Associate Professor André Herman, Department of Cinema and Photography, VA-259, Concordia University, 1455 de Maisonneuve Blvd. West, Montreal, Quebec H3G 1M8. Deadline, June 25th, 1986.