

To: Naomi Cahn, Mary Devine, Craig Stowers
From: Tom Morris
Date: April 2, 2020
Subject: Drafting suggestions

Thank you all for your *continued* work on this project (I think that you've started to earn extra credit). I'm making a few drafting suggestions for the 3/31 draft. As they are not intended to change the draft's policy, please share them with the group only if you feel that doing so would be helpful; they may have some substantive effect.

Page 3, line 1, strike "means:" and substitute "means the earliest to occur of:"

Rationale: this clarifies that termination occurs as soon as any of the three alternatives occurs.

Page 6, line 20, strike "EXCLUSION." and substitute "EFFECT OF MARRIAGE."

Rationale: Subsection (b) of this section is not an exclusion; rather, it clarifies that some claims otherwise excluded by subsection (a) can be brought under the act. The commonality between subsections (a) and (b) is the effect of marriage – or some similar concept.

Page 7, line 2, strike "Claims to enforce economic rights" and substitute "Except as otherwise provided in this [act], a claim to enforce an economic right".

Page 7, line 3, strike "are" and substitute "is".

Rationale: Read literally, subsection (a) means that law other than this act governs the enforcement of economic rights arising under this act, which is nonsense. The exception clarifies that law other than this act supplements this act except to the extent of a conflict with this act. The exception clause could perhaps even be drafted as applying to all four subsections (a) to (d).

The amendment also moves from the plural to the singular in keeping with ULC Drafting Rule 103 (c): "Use the singular rather than the plural. The singular includes the plural and is simpler and clearer than the plural."

Page 9, strike line 23 and substitute "after termination of the cohabitants' relationship."

Page 9, strike line 25 and substitute "cohabitants' relationship."

Rationale: The change to subsection (b) uses the defined term rather than a similar but undefined phrase. The change to subsection (a) uses the defined term for consistency.

Page 14, strike lines 17 and 18 and substitute "section after the date of that cohabitant's".

Rationale: The existing language in (b) largely restates the substantive language from subsection (a) that defines the claim, but deletes "fair and". But because the only claim allowed in the whole section is the one state in subsection (a), there's no need to restate the substance of the claim. It's cleaner just to say that you can't bring a claim under this section after the date of the marriage.