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MATRIMONIAL PROPERTY LAW IN CANADA

McLeod & Mamo

Release No. 4, September 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in October 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the October 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This unique work delivers both a thorough introduction to matrimonial property law and a detailed examination of the specific issues arising in every province which practitioners must be familiar with. This resource discusses: unequal divisions of property, excluded property, the valuation of the various kinds of property including pensions and the specific legislation and case law pertinent to each jurisdiction.

What's New in this Update:

This release features updates to legislation in British Columbia, Ontario, and Quebec, as well as updates to the Matrimonial Property Division Quantums appendix.

Highlights

Matrimonial Property Division Quantums — Assets Which May be Excluded from Property to be Divided — Gifts and inheritances — Saskatchewan — Parties, who were married for 34 years, built mixed farming operation, and engaged in off-farm employment, starting by purchasing one-quarter section of farmland and later farming fourteen quarter sections, with wife being responsible for books and farm finances — Ten quarter sections of farmland were jointly owned, home quarter was jointly owned by parties with husband's mother, S, and wife was joint owner of two-quarter sections in southeastern Saskatchewan that her mother, E, gifted to her — After separation, husband was diagnosed as bipolar and with colon cancer and also suffered pneumonia, S took over bookkeeping and banking for farming operation from wife and for husband personally, and wife moved off farm — Wife commenced legal proceedings, with result that trial judge determined that gifted property was family property and that in circumstances, it was appropriate to divide farmland in specie and give wife opportunity to directly benefit from land ownership after decades of devotion to family farm business — Husband appealed — Appeal allowed in part — Value of wife's one-half interest in gifted property was family property that had to be shared equally with husband — Trial judge noted that land was gifted to wife at time when marriage was stable and well before separation was even contemplated, but did not go on to analyze significance of that factor and did not appear to weigh factor in overall balancing of relevant considerations — Mere fact that parties did not use gift should not have inexorably led to inference that they did not view it as family property — Trial judge's reasoning ignored considerable distance that separated parties farm from gifted property that, logistically speaking, prevented them from comingling inter vivos gift with their farm. *Tyacke v. Tyacke* (2021), 2021 SKCA 80, [2021] 12 W.W.R. 628, 2021 CarswellSask 333 (Sask. C.A.)

Matrimonial Property Division Quantums — Factors Affecting Equal or Unequal Division — Dissipation of assets — Parties were married for 10 years and they had two children — Wife remained in matrimonial home with children after parties separated — Prior to marriage wife owned home with her sister, and after marriage various upgrades were done to home — Husband entered commercial sign advertising business during marriage, and business ultimately failed — Wife applied for relief including unequal division of property in her favour principally on basis that husband's failed investments

amounted to dissipation — Wife further claimed \$15,000 exemption for funds she had before marriage — Trial judge concluded that presumption of equal division should apply — Wife appealed — Appeal dismissed except to allow increase in wife's exemptions in amount of \$9,250 — Trial judge took holistic view of whether equal property division would be just and equitable, and considered many factors — It was not necessary for trial judge to discuss in detail every factor under s. 8 of Matrimonial Property Act — Husband's investment decisions may not have been wise, but they were genuine, and he made investments believing them to be for family's benefit — Trial judge applied correct test, and conclusion was supported by evidence — Trial judge's conclusion that wife's parents were not credible with respect to argument that wife generated value in matrimonial home through \$100,000 in renovations contributed by her parents was owed deference. *Nissen v. Nissen* (2020), 35 R.F.L. (8th) 1, 2020 ABCA 8, 2020 CarswellAlta 48 (Alta. C.A.)

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