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### **FAMILY PROPERTY LAW AND PRACTICE IN CANADA**

**Wilton & Joseph**

**Release No. 5, September 2024**

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 Chapter 8 (Ontario).

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## **Highlights**

In this release the partition and sale sections, covering both s. 9 and s. 10(1)(c) have been updated. New sections covering the right of first refusal, interim partition and sale, and premature requests for partition and sale have been added.

**Notable cases include:**

- The listing of the matrimonial home need not be delayed to provide the party who is interested in purchasing the home time to arrange financing. See *Ilchuk v. Ilchuk*, 2024 CarswellOnt 2974, 2024 ONSC 1276 (Ont. S.C.J.).
- An interim order for partition and sale will be appropriate where one party essentially holds the matrimonial property “hostage” by occupying it and refuses the other party’s entry. See *Sparkman v. Sparkman*, 2023 CarswellOnt 842, 2023 ONSC 41 (Ont. S.C.J.).
- A party’s desire to capitalize on a seller’s real estate market, despite not having an urgent need for the equity in the matrimonial home, will not outweigh a determination that selling the house may not be in the children’s best interests. See *Gertley v. Gertley*, 2022 CarswellOnt 3538, 2022 ONSC 1750 (Ont. S.C.J.).
- Where there is no other way to resolve all issues from the trial conclusively, the sale of the home may be ordered even if it is not pleaded. See *Scheibler v. Scheibler*, 2022 ONSC 6472, 2022 CarswellOnt 19734 (Ont. S.C.J.).
- Where both parties are in dire financial straits, and there are property tax arrears on the non-matrimonial property, sale of the property is necessary. See *Doyle v. De Sousa*, 2023 CarswellOnt 8174, 2023 ONSC 3163 (Ont. S.C.J.). Similarly, see *Wejdan v. Noor*, 2023 CarswellOnt 12234, 2023 ONSC 4598 (Ont. S.C.J.) in which the court ordered the immediate sale of an investment property on the grounds it was highly leveraged and did not cover its costs.

Also included in the release is the rewritten and updated first part of VI. The Matrimonial Home. Topics covered include s. 18 (Definitions), s. 19 (Possession), s. 26(2) (Termination of Possessory Rights – Upon Death), s. 52(2) (Termination of Possessory Rights – By Agreement) and s. 20 (Designation of Matrimonial Home).

**Notable cases include:**

- The matrimonial home exception does not apply where the property was sold prior to the date of separation. See *Boyer v. Brown*, 2023 ONSC 3905, 2023 CarswellOnt 12743 (Ont. S.C.J.).
- The manner in which the parties regularly occupied a property owned may illustrate their intentions in regard this (secondary) property. See *Peters v. Peters*, 2024 CarswellOnt 5841, 2024 ONSC 1526 (Ont. S.C.J.).
- The court may order that the matrimonial home designation be cancelled upon a finding that the property is not a matrimonial home: *A.M.S. v. D.M.*, 2023 CarswellOnt 17848, 2023 ONSC 6534 (Ont. S.C.J.).

**ProView Developments**

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