

# *Property in Family Law*

## *Table of Contents*

*Page No.*

<b>TAB 1</b>	Section 8 Factors	Kevin E. Hannah
--------------	-------------------	-----------------

General Property Categories .....	1
Section 7(2) Exempt Property .....	1
Section 7(3) “Just and Equitable” Property .....	1
Section 7(4) 50/50 Property .....	1
Product vs. Non-Product of the Marriage, a.k.a. “Fruit of the Marriage Tree” .....	2
Section 7(4) 50/50 Property .....	2
Section 7(2) Exempt Property .....	3
Section 7(3) “Just and Equitable” Property .....	3
Specific “Just and Equitable” Categories .....	4
Increase in Value of Exempt Property, Section 7(3)(a).....	4
Income from Exempt Property, Section 7(3)(b) .....	4
Property Acquired <i>After</i> a Divorce, etc. Section 7(3)(c).....	4
Property that is Gifted from one Spouse to Other, s. 7(e)(d).....	6
Conclusion .....	7
Section 8 Factors: A Principled Approach .....	8
Section 8 and Fairness.....	9
Application of Section 8 Factors.....	10
Appendix “A”: Sections 7 and 8 of the <i>MPA</i> .....	17
Appendix “B”: Section 8 Cases.....	20

<b>TAB 2</b>	Is It Property? (Usually!)	W. Steven Andrew, Q.C.
--------------	----------------------------	------------------------

Introduction .....	1
Pets .....	1
Golf Club Memberships .....	2
Air Miles .....	6
Workers’ Compensation Benefits .....	8
Time Shares .....	11
Motor Vehicle Accidents/Causes of Action .....	12
Disability Pension .....	14
Severance Pay .....	15
Trusts .....	17
Bonuses .....	18
<i>Roenisch v. Roenisch</i> .....	20
<i>Hodgkinson v. Hodgkinson</i> .....	20

<b>TAB 3</b>	Dissipation and Matrimonial Property	Barbara J. Widdowson, Q.C.
--------------	--------------------------------------	-------------------------------

Introduction & Legislation.....	1
Definition .....	4
Types of Dissipation .....	6
Vices .....	6
Destruction of Assets/Waste.....	8
Gifts to Family Members.....	9
Bad Investments/Non-Profitable Business .....	10
Legal Fees .....	13
Allegations Generally of Funds Not Accounted For .....	14
How to Deal with Dissipation? .....	16
Deal with the Assets of the Date of Trial .....	16
Unequal Distribution of Remaining Matrimonial Assets.....	16
Notionally Add Back in the Value of the Dissipated Asset .....	17
Conclusion .....	17

<b>TAB 4</b>	Practical Pointers	Wendy E. Best, Q.C.
--------------	--------------------	---------------------

Certificate of Lis Pendens (“CLP”).....	1
Interim Distribution .....	2
Long term Exclusive Possession.....	3
“Bird Nesting” .....	6
Occupation Rent .....	6
RRSP Transfer/LIRA/RRIF.....	7
Double Dipping .....	9
Sample Documents:	
How to Organize a Property File	
Family Questionnaire	
Lawyer Checklist	
Client Document Check List	
Summary of Distributable Assets & Liabilities	
Partial Property Agreement	

<b>TAB 5</b>	Married v. Unmarried – Is the Gap Narrowing? The Presumption of Advancement	W. Steven Andrew, Q.C.
--------------	--	------------------------

Introduction .....	1
Case Review .....	1
<i>Panara v. Di Ascenzo</i> .....	2
Enrichment .....	4
Deprivation .....	4
Juristic Reason.....	5
Constructive Trust.....	8

Casual Link ..... 8  
 Monetary Award Sufficiency ..... 9  
 Quantum ..... 9  
*Smith v. Prusko*..... 11  
*Horsfall v. Tyrie* ..... 13  
*R. (F.D.) v. P. (M.D.)* ..... 15  
*Swaren v. Swaren* ..... 18  
*Palechuk v. Fahrlander* ..... 25  
*Hughes v. Hughes* ..... 29  
 Conclusion ..... 30  
 Presumption of Advancement  
*Campbell v. Campbell*  
*Cameron v. Sutton*

<b>TAB 6</b>	The Ironclad Agreement.....Fact or Fiction???	Barbara A. Krahn
--------------	---	------------------

Introduction ..... 1  
 Agreement Provisions ..... 2  
 Historical Perspective and Discussion ..... 4  
 Conclusion ..... 23  
 Cases Cited ..... 24  
 Sample Document – Draft Pre-Marriage Agreement  
 PowerPoint Presentation – The Ironclad Agreement...Fact or Fiction???

<b>TAB 7</b>	Bibliography
--------------	--------------