



Legal Education
Society of Alberta

62141.00

Family Property Act

Edmonton, Alberta

Calgary, Alberta

Chair

Aaron D. Martens

Dunphy Best Blocksom LLP

Calgary, Alberta

Faculty

Michelle J. Bailey

Moe Hannah LLP

Calgary, Alberta

Christopher A. Jackson

Jackson Law

Edmonton, Alberta

Tina Huizinga

Huizinga Di Toppa Coles & Layton

Edmonton, Alberta

Scot Menzies

Widdowson Kachur Ostwald Menzies LLP

Calgary, Alberta

LEGAL EDUCATION SOCIETY OF ALBERTA

These materials are produced by the Legal Education Society of Alberta (LESA) as part of its mandate in the field of continuing education. The information in the materials is provided for educational or informational purposes only. The information is not intended to provide legal advice and should not be relied upon in that respect. The material presented may be incorporated into the working knowledge of the reader but its use is predicated upon the professional judgment of the user that the material is correct and is appropriate in the circumstances of a particular use.

The information in these materials is believed to be reliable; however, LESA does not guarantee the quality, accuracy, or completeness of the information provided. These materials are provided as a reference point only and should not be relied upon as being inclusive of the law. LESA is not responsible for any direct, indirect, special, incidental or consequential damage or any other damages whatsoever and howsoever caused, arising out of or in connection with the reliance upon the information provided in these materials.

This publication may contain reproductions of the Statutes of Alberta and Alberta Regulations, which are reproduced in this publication under license from the Province of Alberta.

© Alberta Queen's Printer, 2019, in the Statutes of Alberta and Alberta Regulations.

The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

© 2019. Legal Education Society of Alberta. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior permission of the Legal Education Society of Alberta.

ISBN-10: 1-55093-736-7
ISBN-13: 978-1-55093-736-7

Contributions and Distributions: When Will Courts Consider Unequal Divisions of Matrimonial Property?

Prepared by:

Christopher A. Jackson

Jackson Law



Legal Education
Society of Alberta

For: *Family Property Act*
Calgary, Alberta – November 13, 2019
Edmonton, Alberta – November 22, 2019

CONTRIBUTIONS AND DISTRIBUTIONS:

WHEN WILL COURTS CONSIDER UNEQUAL DIVISIONS OF MATRIMONIAL PROPERTY?

Introduction	2
LESA History	2
Recent Case Law - <i>Stuve</i>	3
Recent Case Law – Other Cases.....	5
<i>Turanich v Noyen</i> , 2019 ABQB 596	5
<i>MAK v TJK</i> , 2019 ABQB 547	5
<i>Stalzer (Estate) v Stalzer</i> , 2019 ABQB 658	6
<i>Hoskins v Hoskins</i> , 2019 ABQB 651.....	7
<i>Boddy v Boddy</i> , 2018 ABQB 1019	8
<i>O’Neil v Yaskowich</i> , 2018 ABQB 599.....	9
Future of Unequal Distributions	10
Conclusion	11

INTRODUCTION

Section 8 of the *Matrimonial Property Act* (the “MPA”) has been a consistent source of both interest and confusion since its introduction. As we are all already aware, section 7 of the MPA requires us to consider the factors in section 8 prior to the Court dividing the property in a manner that is “...just and equitable.” Section 7’s default rule for dividing property is to split it equally between the parties, unless section 8’s factors would make that inequitable.

This creates challenges for practitioners in being able to advise clients with some certainty as to when Courts will deviate from the rule of equal division. As the case law has evolved, we have obtained more information as to when unequal divisions are likely to be ordered by the Court. This process will continue to evolve.

The amendments to the MPA incorporated in the new *Family Property Act* will continue to impact the law in the area. The Courts will have to consider how section 8 factors should be addressed for adult interdependent relationships, and whether they will be given the same weight as has been applied for married couples. In addition, the new Act will also permit the Court to weigh factors from the beginning of an interdependent relationship for a married couple, many of whom co-habited prior to their marriage.

LESA HISTORY

This general topic has been frequently considered in LESA seminars in the past. In fact, it appears that every time the subject of Matrimonial Property is considered, we look again at section 8 to determine what new things have arisen.

In 2005 Monica Bast¹, now Justice Bast, examined when exempt property’s increase in value was shared equally or unequally after the Court looked at section 8 factors. At the time, there were several cases on both sides of the ledger. As is consistently the case, there were no hard and fast rules, but each case was determined on its own particular facts.

In 2009 Renee Cochard², prior to becoming Judge Cochard, looked at the unequal division of matrimonial property after the decision in *Hodgson v Hodgson*, 2005 ABCA 13 (“Hodgson”). *Hodgson* was quite clear that matrimonial property was to be divided as of the date of trial. It also outlined the process to apply when dividing matrimonial property. The paper recommended strongly that we

¹ Monica Bast, “Following the Money,” Legal Education Society of Alberta, May 2005.

² Renee Cochard, “Unequal Division of Matrimonial Property: Post-Hodgson,” Legal Education Society of Alberta, May 2009.