

W-Five – An Overview of the Principles of Matrimonial Property Law

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Matrimonial Property Law for Wills and Estates Practitioners

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INTRODUCTION

Until the late 1970's, there was no statutory or other right generally in Alberta upon marriage breakdown to claim an interest in property held by one's spouse. The Supreme Court of Canada's decision in *Murdoch v Murdoch*¹, which upheld the Alberta courts' decisions denying a wife a share in the family ranch notwithstanding that she had labored for years alongside her husband, was arguably the final impetus for change. The *Matrimonial Property Act* (the "Act") was proclaimed in force on January 1, 1979. Unlike the *Divorce Act* which is national in its application, the scheme of distribution of property upon relationship breakdown is not consistent across the provinces. This makes sense since property is a matter of provincial jurisdiction pursuant to the *Constitution Act, 1867*. Accordingly, great caution must be exercised when considering case law from the various provinces in terms of what is included and excluded, when the property is valued and how it is divided.

The distribution of property upon marriage breakdown pursuant to the provisions of the *Act* is simple in theory but can be very complicated in practice, depending upon the nature of the property and the circumstances of the parties during cohabitation and thereafter. This paper is intended to provide to non family law lawyers a general overview of the *Matrimonial Property Act* (the "Act") and its application.

WHO?

Although it may appear self evident from the title of the legislation, the state of marriage is central to the scheme of property distribution pursuant to the *Act*:

- the parties must be legally married in order for the provisions of the *Act* to apply to the distribution of their property upon relationship breakdown. It does not apply to the distribution of property of individuals who have resided together in an exclusive conjugal relationship outside the formal bonds of marriage (section 3 and 5);
- the date for determining certain exemptions pursuant to the *Act* is the date of marriage, regardless of whether or not the parties earlier cohabited (section 7(2) (c));

¹ Murdoch v Murdoch [1975] 1 SCR 423

- the latest date after which the right to claim a property distribution expires is 2 years after the date the marriage was dissolved (section 6 (b)); and
- if the parties enter into an agreement that provides that Part 1 of the Act (the part which outlines the legislative scheme of distribution) will not apply to the status, ownership and division of their property, that agreement will not be enforceable until such time as the parties are legally married (section 37).

It is easy to determine the start date or “ground zero” in respect of determination of the extent of, and commencement of sharing of, *matrimonial* property – it is the date that the parties made a formal commitment to one another and entered into the contract of marriage. If the application of the Act is extended to those parties who chose not to enter into the contract of marriage or some other contract of interdependence, the start date may not be easily ascertainable – the first sleepover? the date, if any, when utilities were placed into joint names?

Whether the Act should be amended to include common law couples is beyond the scope of this paper and is mentioned only as a caution that the consequences of relationship breakdown in terms of division of property is different dependent upon marital status. The Supreme Court of Canada has already definitively answered the question as to whether restricting provincial matrimonial property legislation to married persons is discriminatory, holding that it is not for the reasons therein enunciated². It is a matter for the provincial legislators to determine whether to enact or amend legislation to provide for a scheme of division of property upon breakdown of common law relationships or whether to leave such a division to be determined pursuant to the principles of unjust enrichment.

Thus, the Act currently may only be invoked by legal spouses. Further, the spouses must live in Alberta, have had their last joint habitual residence in Alberta or, if a joint habitual residence has not been established since marriage, the habitual residence of both of the parties before marriage was Alberta. Otherwise, an application for a division of property may only be brought in Alberta if a Statement of Claim for Divorce was issued in Alberta (section 3).

The parties to an action pursuant to the Act are the husband and the wife. Third parties may be added only in narrowly proscribed situations. If, within one year of the date of commencement of the action:

- a spouse transfers assets to a third party who is not a *bona fide* purchaser for value, or gifts property to a third party; **and**

² Nova Scotia (Attorney General) v Walsh [2002] 4 S C R 325 (SCC)