

Is it Time to Update the *Matrimonial Property Act*?

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Matrimonial Property Issues

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IS IT TIME TO UPDATE THE *MATRIMONIAL PROPERTY ACT*?

The *Matrimonial Property Act* was enacted in 1978.¹ Since then, there have been significant changes to economic, political, and social attitudes and expectations regarding the distribution of property between spouses on marriage breakdown. Given that changes to the *MPA* have been minimal during the 35 years that the *MPA* has been in force, the Alberta Law Reform Institute is examining whether certain elements of the *MPA* should be updated to better serve the needs of Albertans.²

ALRI has already done some work on this project. In 2005, ALRI released a background paper specifically regarding matrimonial property legislation and valuation dates.³ In 2010, a case study was completed for ALRI that identified “the most frequently raised and the most troublesome issues” that Alberta courts deal with regarding matrimonial property.⁴ Of the issues addressed in that case study, ALRI has selected three topics to examine in closer detail – debt, dissipation, and date of valuation. Depending on the feedback ALRI receives in regard to these issues, amendments to the *MPA* may be recommended.

Before exploring issues specifically related to debt, dissipation, and date of valuation, this paper will briefly discuss how the *MPA* currently operates, and what the comprehensive objectives of updating the *MPA* might be.

OVERVIEW: PROPERTY DIVISION UNDER THE *MPA*

The underlying purpose of the *MPA* has been described by the Court of Appeal of Alberta as a means to “legally recognize marriage as an economic partnership, founded on the presumption that the parties intend to share the fruits of their labour during and as a result of it, on an equal basis.”⁵

¹ RSA 2000, c M-8 (the *MPA*).

² The Alberta Law Reform Institute is subsequently referred to as ALRI in this paper.

See Jonette Watson Hamilton & Annie Voss-Altman, “The *Matrimonial Property Act*: A Case Law Review,” Research Paper (2010), para 1.

³ ALRI, *Matrimonial Property Legislation: Valuation Dates*, Background Paper (2005).

⁴ See Jonette Watson Hamilton & Annie Voss-Altman, “The *Matrimonial Property Act*: A Case Law Review,” Research Paper (2010).

⁵ *Jensen v Jensen*, 2009 ABCA 272, para 1. Also see Jonette Watson Hamilton & Annie Voss-Altman, “The *Matrimonial Property Act*: A Case Law Review,” Research Paper (2010) at para 42.

The presumption of equal sharing is articulated in section 7(4) of the *MPA*. While section 7 enables the court to distribute all of the property owned by both spouses and by each of them, as per section 7(1), not all of this property is shared equally. Section 7(2), for example, specifies types of property that are exempt from equal sharing, such as property acquired by the spouses before marriage. Similarly, section 7(3) gives the court discretion to divide certain types of property “in a manner that it considers just and equitable.” The exercise of this discretion should be based on consideration of a list of 12 factors set out in section 8 of the *MPA*. There is no formula for applying these factors.

The presumption of equal sharing articulated in section 7(4) may also be overcome when the court concludes it would be unjust or inequitable to divide the property equally. This conclusion should also be based on consideration of the factors set out in section 8.⁶

The Alberta Court of Appeal has also outlined a four-step process for the division of matrimonial property under the *MPA*.⁷ The first step involves determining all of the property that the spouses own at the date of trial. Second, any property that is exempt as per section 7(2) should be identified and its market value should be excluded from distribution. Third, property subject to section 7(3) should be identified and distributed between the parties in a manner that is just and equitable. The division of this property is entirely within the discretion of the trial judge, as it is not subject to a presumption of equal sharing. Lastly, the remaining assets should be divided equally, unless an equal division would not be just and equitable after considering the factors outlined in section 8.

LAW REFORM AND THE *MPA*

ALRI’s ultimate goal in reviewing the *MPA*, specifically debt, dissipation and date of valuation under the *MPA*, is to ensure that the division of matrimonial property in the province of Alberta is appropriate. The most significant changes to the *MPA* that ALRI is considering relate to the date of valuation. Changes regarding debt and dissipation, in turn, would impact the pool of property to be divided between the parties. ALRI recognizes that there could be a variety of ways to approach these issues, given that matrimonial property regimes vary throughout the world and even across Canada.

⁶ *Jensen v Jensen*, 2009 ABCA 272, paras 17-18. The scheme for the distribution of matrimonial property between spouses under the *MPA* is also discussed in more detail in ALRI, *Matrimonial Property Legislation: Valuation Dates*, Background Paper (2005), paras 7-12.

Sections 7 and 8 of the *MPA* can be reviewed in the appendix attached to this paper.

⁷ *Hodgson v Hodgson*, 2005 ABCA 13, paras 19-24.