

Exemptions

Prepared For: Legal Education Society of Alberta
Matrimonial Property Division

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INTRODUCTION

I approached this topic by canvassing with the members of my firm recent issues that have arisen in their practices with respect to exemptions. The questions asked, which make up this paper are as follows:

1. What does “tracing” mean and how much “tracing” is required?
2. Speaking in terms of investments, do we trace the individual share/stock or do we look at the whole portfolio? Applying this to cattle, do we trace the cow or the herd?
3. How do we approach the increase in value of exemptions?
4. How do we approach the decrease in value of exemptions?
5. How are the presumptions of advancement and resulting trust applied in matrimonial and common law property division?
 - a. How is the 50% gifted under a *Harrover* and *Jackson* analysis to be divided?
 - b. Does my client have a better chance of getting his/her property back if he/she puts it into the sole name of their spouse, or into joint names?
 - c. What happens if my client puts an asset into joint names prior to marriage, as opposed to during marriage?
 - d. What happens if my client is in a common law relationship but has put property into joint names?
6. If my client uses their exemption to pay down a debt/mortgage have they gifted 50% of that exemption under a *Harrover* and *Jackson* analysis?
7. If my client puts their exemption in joint names in one house, and then they sell that house and buy another house in joint names, is their exemption halved twice?
8. If my client’s exemption is put into a joint bank account for a short period of time prior to being put into an account/asset in their sole name, have they lost half of their exemption?

THE SCHEME OF THE ACT

The division of matrimonial property in Alberta is governed by the *Matrimonial Property Act*, R.S.A. 2000, c. M-8 (the “*MPA*”). In short, the MPA instructs us to:

1. Apply a presumption of equal sharing to property acquired during marriage, unless it is not just or equitable to do so (s 7(4));
2. To entirely exempt from sharing property acquired outside of the marriage (s 7(2)); and
3. To distribute certain other categories of property – for example, increments or increases in value of exempt property – as may be “just and equitable” considering s 8 factors (s 7(3)).

The relevant sections are set out as follows:

Distribution of property

7(1) The Court may, in accordance with this section, make a distribution between the spouses of all the property owned by both spouses and by each of them.

(2) If the property is

- (a) property acquired by a spouse by gift from a third party,
- (b) property acquired by a spouse by inheritance,
- (c) property acquired by a spouse before the marriage,
- (d) an award or settlement for damages in tort in favour of a spouse, unless the award or settlement is compensation for a loss to both spouses, or
- (e) the proceeds of an insurance policy that is not insurance in respect of property, unless the proceeds are compensation for a loss to both spouses,

the market value of that property at the time of marriage or on the date on which the property was acquired by the spouse, whichever is later, is exempted from a distribution under this section.

(3) The Court shall, after taking the matters in section 8 into consideration, distribute the following in a manner that it considers just and equitable: