

## **Family Law**

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## FAMILY LAW

### **I WAS MARRIED BEFORE FOR 15 YEARS. DO I HAVE TO SPLIT EVERYTHING WITH MY NEW WIFE OF 5 YEARS?**

In Alberta, there is a legal presumption that all property acquired during the marriage is divided equally between spouses, unless it appears to the Court that it would not be just and equitable to do so, as set out in sections 7(4) and 8 of the *Matrimonial Property Act*, RSA 2000, C M-8 (the “MPA”).

The MPA provides exceptions (s. 7(1)) for property acquired as a gift from a third party, by inheritance, by a spouse before the marriage, for an award of damages in tort, or as the proceeds of an insurance policy (“exempt property”).

If exempt property increases in value, or if other property is acquired as a result of exchange or from the proceeds of exempt property between the date of marriage or acquisition and the time of trial, the Court is to distribute the proceeds or increase in value in a manner it considers “just and equitable” (s. 7(3)).

What is just and equitable will depend on the facts of the case. For example in a longer term marriage, the courts are more likely to award an equal sharing of the increase in value of the exempt assets. In a shorter term marriage where there is no financial integration of the parties’ assets the spouse may not receive a share of the increase in value of exempt assets.

Division of matrimonial property between yourself and a second wife will be determined based on the above rules and the considerations set out in section 8 of the MPA. The fact that there was a prior marriage for either party does not mean that these rules operate differently. Everything acquired by the spouses during the marriage (subject to the exemptions set out in section 7(1)) will be presumptively divided equally; the proceeds or increase in value of exempt assets will be divided on a “just and equitable” basis.

In *Nordholt v Nordholt*, 2009 ABQB 600, Justice Lee dealt with a second, shorter, marriage for both parties. Uniquely, these circumstances meant that the only property to be divided was exempt property. The wife was awarded spousal support for five years despite the husband's argument that he should not have to pay given that her first husband did not have to pay spousal support and her first marriage had been longer. Ultimately the judge found that it would be just and equitable for the parties to retain their own assets as much as possible, given the lack of financial integration between the parties during the marriage.