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MATRIMONIAL PROPERTY LAW IN CANADA McLeod & Mamo Release No. 2, May 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in October 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the October 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This unique work delivers both a thorough introduction to matrimonial property law and a detailed examination of the specific issues arising in every province which practitioners must be familiar with. This resource discusses: unequal divisions of property, excluded property, the valuation of the various kinds of property including pensions and the specific legislation and case law pertinent to each jurisdiction.

What's New in this Update:

This release features updates to Chapter 1 Introduction, Chapter 9-S Prince Edward Island and the Selected Legal Literature appendix.

Highlights

Prince Edward Island — Deductions from Net Family Property — Net Value on Date of Marriage of Property Brought into Marriage — In *T.L.J. v. D.D.J.*, the parties started dating in 2005, married in 2008, and separated in 2014. The parties moved into the home co-owned by wife and her parents. Wife initially held title to the home, but her parents provided a \$20,000 contribution, and ultimately was deeded to wife, her mother, and her father in 1997. In addition to financial contribution to the purchase of the property, wife's parents both provided labour in the construction of the home. Husband had believed that wife was the sole owner of the home, and during the marriage had contributed \$21,500 towards the cost of a renovation to the home. Husband also contributed to household expenses. He was unaware of any contributions made by wife's parents. During the marriage wife generally took care of inside chores and husband took care of outside chores. Husband submitted that 100% of the value of the home should be listed in wife's assets on the basis of the law of resulting trust. Given the financial and labour contributions of wife's parents to the purchase and construction of the home, the argument of a resulting trust was rejected, and only one-third of the value of the home would be reflected in wife's assets, with husband entitled to equalization of half of that amount: *T.L.J. v. D.D.J.*, 2019 PESC 29 (P.E.I. S.C.).

Prince Edward Island — Costs — Generally — In *Dykeman v. MacVarish*, wife brought a motion seeking various forms of relief primarily related to sale of the family home, including a request for interim exclusive possession, sale, and pre-sale repairs of the family home. The grounds asserted for entitlement to relief in the notice of motion related entirely to equalization of property issues and ancillary matters. Based upon the notice of motion, supporting materials, and arguments presented here, it was not appropriate to adjudicate the question of entitlement to the bulk of the relief sought. However, one of the items sought was an order for husband to deliver a sworn statement of property. Husband failed to provide his statement of property until faced with wife's motion. A sworn document purporting to fulfil that requirement was filed with husband's motion materials. Costs on the motion were at issue. In exercising discretion in respect of costs, husband's general success on the majority of the issues was relevant, but of note was the fact that husband had failed to file his statement of property until faced with the motion. While it may be unlikely that, as a standalone issue, wife would have brought a motion for the statement of property, husband's delinquency in providing financial disclosure could not be

condoned by the court, and compliance must be a priority for parties, as timely and fair resolution or determination of so many issues in family law litigation depend upon it. In the circumstances, husband was entitled to costs in respect of the motion on a partial indemnity basis, subject to a \$250 deduction in respect of the statement of property issue: *Dykeman v. MacVarish*, 2020 PESC 38 (P.E.I. S.C.).

ProView Developments

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