

# *The Matrimonial Property Act*

*Repealed*

by Chapter M-6.11 of the *Statutes of Saskatchewan, 1997*  
(effective March 1, 1998).

*Formerly*

Chapter M-6.1 of the *Statutes of Saskatchewan, 1979*  
(effective January 1, 1980) as amended by of the *Statutes of  
Saskatchewan, 1979-80, c.92; 1983, c.80; 1988-89, c.12;  
1989-90, c.20; 1993, c.C-26.1; and 1994, c.27.*

## **NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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## CHAPTER M-6.1

### An Act respecting the Possession and Distribution of Property between Spouses

#### Short Title

##### Short title

- 1 This Act may be cited as *The Matrimonial Property Act*.

#### Interpretation

##### Interpretation

- 2 In this Act:

- (a) **“child”** means a child of a spouse who is:
- (i) under the age of eighteen years; or
  - (ii) eighteen years of age or over and under the charge of one or both spouses but unable, by reason of illness, disability or other cause, to withdraw from his or their charge or to provide himself with the necessaries of life;
- and includes:
- (iii) any person to whom both spouses stand in *loco parentis*; or
  - (iv) any person of whom either spouse is a parent and to whom the other spouse stands in *loco parentis*;
- (b) **“corporation”** means a body corporate wherever or however incorporated, whether or not it is actively carrying on business;
- (c) **“court”** means the Court of Queen’s Bench;
- (d) **“dissipate”** means to jeopardize the financial security of a household by the squandering of property;
- (e) **“household goods”** means personal property that is ordinarily used, acquired or enjoyed by one or both spouses for transportation, household, educational, recreational, social or aesthetic purposes, but does not include heirlooms, antiques, works of art, clothing, jewelry or other articles of personal use, necessity or ornament or any personal property acquired or used in connection with a trade, business, calling, profession, occupation, hobby or investment;
- (f) **“interspousal contract”** means a binding contract made in accordance with section 38;

(g) “**matrimonial home**” means property:

(i) that is:

(A) owned by or leased to one or both spouses, or in which one or both spouses have an interest including, without limiting the generality of the foregoing, an interest under a partnership or trust or an interest as a purchaser under an agreement for sale; or

(B) owned by a corporation in which one or both spouses have an interest where, by virtue of that interest, one or both spouses are entitled to occupy the property as a family home; and

(ii) that is or has been occupied by one or both spouses as the family home or that is mutually intended by the spouses to be occupied by one or both of them as the family home;

and that is:

(iii) a house or part of a house, including the land appurtenant thereto consisting of not more than sixty-five hectares;

(iv) part of business premises used as living accommodation;

(v) a trailer or vehicle commonly referred to as a mobile home, including the land appurtenant thereto consisting of not more than sixty-five hectares;

(vi) a unit or additional unit in a condominium plan or a replacement plan, as the case may be, as referred to in *The Condominium Property Act, 1993*, including the owner’s share in the common property as shown on that plan; or

(vii) a suite;

but, for the purposes of Parts II, III and IV, a matrimonial home shall also meet the requirements of matrimonial property as defined in clause (h);

(h) “**matrimonial property**” means any real or personal property whatsoever, regardless of its source, kind or nature, that, at the time an application is made under this Act, is owned, or in which an interest is held, by one or both spouses, or by one or both spouses and a third person, and, without limiting the generality of the foregoing, includes:

(i) a security, share or other interest in a corporation or an interest in a trust, partnership, association, organization, society or other joint venture;

(ii) property over which a spouse has, either alone or in conjunction with another person, a power of appointment exercisable in his favour;

(iii) property disposed of by a spouse but over which the spouse has, either alone or in conjunction with another person, a power to consume, invoke or dispose of the property;

(iv) property mentioned in section 28;

- (i) **“matrimonial property order”** means an order of a court made under this Act;
- (j) **“personal representative”** includes a trustee;
- (k) **“spouse”** means either of a man or a woman who:
  - (i) at the time an application is made under this Act, is married to the other or is married to the other by a marriage that is voidable and has not been voided by a judgment of nullity; or
  - (ii) has, in good faith, gone through a form of statutory marriage with the other that is void, where they are cohabiting or have cohabited within the twelve months immediately preceding the making of an application under this Act;

and includes:

- (iii) a surviving spouse who continues or commences an application under section 30 and who was the spouse, within the meaning of subclause (i) or (ii), of the deceased spouse on the day of his death;
- (iv) where the applicant is a spouse within the meaning of subclause (ii), the other party to the void marriage;
- (l) **“value”** means the fair market value at the time an application is made under this Act, or at the time of adjudication, whichever the court thinks fit, or, where a fair market value cannot be determined, any value at the time an application is made under this Act, or at the time of adjudication, that the court considers reasonable.

1979, c.M-6.1, s.2; 1979-80, c.92, s.57; 1993, c.C-26.1, s.115; 1994, c.27, s.28.

### **Application of Act**

#### **Application of Act**

**3** This Act applies notwithstanding that:

- (a) the spouses entered into marriage before the coming into force of this Act;
- (b) the matrimonial property in issue was acquired before the coming into force of this Act; or
- (c) a proceeding to determine the rights as between spouses in respect of matrimonial property has been commenced before the coming into force of this Act.

1979, c.M-6.1, s.3.

**PART I**  
**Possession of Matrimonial Home or Household Goods**

**Right to possession**

**4** Where one spouse has a right of possession with respect to a matrimonial home or household goods, both spouses are, as between themselves, equally entitled to the right of possession subject to:

- (a) section 43;
- (b) any order made pursuant to section 5, 6 or 8 whereby one spouse is given possession of the matrimonial home or household goods, as the case may be, to the exclusion of the other;
- (c) any other order made under this Act, unless the court directs otherwise;
- (d) any other order pertaining to the possession of the matrimonial home or household goods that was made by a court of competent jurisdiction before the coming into force of this Act;
- (e) any interspousal contract or, where the court thinks fit, any other written agreement between the spouses.

1979, c.M-6.1, s.4.

**Exclusive possession of matrimonial home**

**5(1)** Notwithstanding any order made under Part II, III or IV and subject to section 7, the court may, upon application by a spouse, make any order it thinks fit and, without limiting the generality of the foregoing, the court may:

- (a) order that spouses are no longer bound to cohabit;
- (b) subject to any terms and conditions that it thinks fit, direct that a spouse be given exclusive possession of a matrimonial home or part thereof for life or for any shorter period that the court directs, regardless of whether the spouses cease to be spouses;
- (c) direct that a spouse vacate a matrimonial home;
- (d) restrain a spouse from entering or attending at or near a matrimonial home;
- (e) fix any rights of spouses that may arise as a result of the occupancy of a matrimonial home and postpone any rights of the spouse who is the owner or lessee, including the right to apply for partition or sale or to sell or otherwise dispose of or encumber the matrimonial home;
- (f) authorize the disposition or encumbrance of the interest of a spouse in a matrimonial home subject to the right of exclusive possession contained in the order;
- (g) fix the obligation to repair and maintain a matrimonial home;
- (h) fix the obligation to pay, and the responsibility for, any liabilities whatsoever that may arise out of the occupation of a matrimonial home;
- (i) direct a spouse to whom exclusive possession of a matrimonial home is given to make any payment to the other spouse that is prescribed in the order;

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- (j) where a matrimonial home is leased by one or both spouses under an oral or written lease, direct that the spouse to whom exclusive possession is given is deemed to be a tenant for the purposes of the lease;
  - (k) release any other matrimonial home from the application of this Part.
- (2) In subsection (1), “**exclusive possession**” includes the right of occupancy.

1979, c.M-6.1, s.5.

**Exclusive use of household goods**

- 6(1) Subject to section 7, the court, on application by a spouse, may by order direct that a spouse be given the exclusive possession, use and enjoyment of any or all of the household goods regardless of their location at the time the order is made.
- (2) An order under subsection (1) may be made subject to any terms and conditions and for any period of time that the court considers necessary.
- (3) In making an order under this section, the court shall consider any possible rights, obligations or liabilities that may arise as a result of the order and may fix the rights and the responsibility for any such obligations or liabilities and may make any order it thinks fit in order to give effect to the fixing of those rights and responsibilities.

1979, c.M-6.1, s.6.

**Powers of court**

7 In exercising its powers under this Part, the court shall have regard to:

- (a) the needs of any children;
- (b) the conduct of the spouses towards each other and towards any children;
- (c) the availability of other accommodation within the financial means of either spouse;
- (d) the financial position of each of the spouses;
- (e) any interspousal contract or, where the court thinks fit, any other written agreement between the spouses;
- (f) any order made by a court of competent jurisdiction before or after the coming into force of this Act with respect to the distribution or possession of matrimonial property or the maintenance of one or both of the spouses or with respect to the custody or maintenance of any children; and
- (g) any other relevant fact or circumstance.

1979, c.M-6.1, s.7.

**Variation, discharge or suspension of order**

8(1) Where an order has been made:

- (a) under this Part; or
- (b) with respect to the possession of a matrimonial home or household goods by any court before the coming into force of this Act;

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the court may, where it is satisfied that there has been a material change in the circumstances, discharge, vary or suspend the order.

(2) An application for an order under subsection (1) may be made by a person named in an order mentioned in subsection (1) or by a person against whose estate or interest the order was made, or by the personal representative of any such person.

1979, c.M-6.1, s.8.

**Registration of order for possession of matrimonial home**

**9(1)** Where an order is made under section 5 or 8 with respect to a matrimonial home and the matrimonial home or part of it is real property and is:

- (a) owned by one or both spouses;
- (b) leased to one or both spouses for a term of more than three years; or
- (c) the subject of a life estate in favour of one or both spouses;

the order may be registered with the registrar of land titles for the land registration district in which the property is situated.

(2) An order registered under subsection (1) binds an estate or interest of any description that the spouse or spouses have in the property to the extent stipulated in the order.

1979, c.M-6.1, s.9.

**Discharge of registered order**

**10(1)** Where:

- (a) an order registered under section 9 granting a spouse exclusive possession of a matrimonial home terminates or where the right of exclusive possession of a spouse who is named in such an order terminates, that spouse; or
- (b) a spouse who has been granted exclusive possession dies, his personal representative;

shall, upon ten days' written notice in accordance with section 53, provide to the spouse against whose estate or interest the order was made or to his personal representative, or to any third party having an interest in the property affected by the order, a discharge, in the form prescribed in the regulations, that discharges any interest with respect to possession that the spouse in possession may have had under the order.

(2) A discharge mentioned in subsection (1) may be registered with the registrar of land titles.

1979, c.M-6.1, s.10.

**Cancellation of registration of order**

**11(1)** A person, or the personal representative of a person, against whose property an order is registered under section 9 may apply to the court for an order directing the registrar of land titles to cancel the registration.

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(2) The court may make an order under this section upon any conditions that it thinks fit.

1979, c.M-6.1, s.11.

**Disposing of encumbering property**

**12(1)** A spouse against whose estate or interest an order is made under this Part may only dispose of or encumber his estate or interest, or otherwise deal with his estate or interest, in a manner that may be detrimental to the spouse in possession, with the consent in writing of the spouse in possession or under an order of the court.

(2) For the purposes of this section, where a consent is provided pursuant to *The Homesteads Act, 1989* no further or other consent is necessary with respect to the matrimonial home for which that consent was required.

(3) Where an order made under section 5 or 8 is not registered, it has no effect as against subsequent *bona fide* purchasers or mortgagees for value without notice.

1979, c.M-6.1, s.12; 1989-90, c.20, s.5.

**Termination of right of possession**

**13** No right of exclusive use or possession of a spouse ordered under this Part continues after the rights of the other spouse as owner or lessee or of both spouses as owners or lessees, as the case may be, are terminated.

1979, c.M-6.1, s.13.

**Provision in certain agreements void**

**14** Notwithstanding any other Act, where an order is made under this Part vesting a right of exclusive possession to the matrimonial home or household goods in a spouse, a provision in any conditional sales agreement, chattel mortgage, chattel lease, lease, mortgage, agreement for sale, contract or other security document that the rights of the contracting spouse or spouses under the agreement shall alter or determine on a change of possession has no effect with respect to a change in possession resulting from the order.

1979, c.M-6.1, s.14.

**Right of redemption, etc.**

**15(1)** Where a person is proceeding to realize upon a lien, encumbrance or execution or exercises a forfeiture against property that is subject to an order under this Part, the spouse who has the right of possession by virtue of an order under section 5, 6 or 8 has the same right of redemption or relief against forfeiture and the same immunities and rights with respect to seizure and sale as the other spouse has and is entitled to any notice respecting the claim and its enforcement or realization to which the other spouse is entitled.

(2) Where a spouse makes any payment by way of, or on account of, redemption or relief against forfeiture under the right conferred by subsection (1), the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, execution or forfeiture.

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(3) Notwithstanding any other Act, where a person who commences a proceeding to realize upon a lien, encumbrance or execution or to exercise a forfeiture does not have sufficient particulars for the purpose of serving personally a spouse entitled to notice under subsection (1), and a notice given by registered mail in accordance with section 53 is not responded to, the proceeding may, by leave of the court, continue in the absence of the spouse and without regard to the interest of the spouse, and any final order in the proceeding terminates the rights of the spouse under this section.

1979, c.M-6.1, s.15.

**Rights additional**

**16** The rights conferred under this Part are in addition to and not in substitution for or in derogation of the rights of a spouse under *The Homesteads Act, 1989*.

1979, c.M-6.1, s.16; 1989-90, c.20, s.5.

**Ex parte application**

**17** An order may be made under this Part on an *ex parte* application by a spouse who is residing in the matrimonial home, if the court is satisfied that, as a result of the conduct of the respondent spouse, there is a danger of injury to the applicant spouse or any other person residing in the matrimonial home.

1979, c.M-6.1, s.17.

**Offences**

**18(1)** Any person who knowingly and wilfully refuses or neglects, without reasonable cause, to comply with an order made against him under section 5, 6 or 8 is, in addition to any other liability under this Act, guilty of an offence and liable on summary conviction to a fine of not more than \$1,000 and, in the case of a continuing offence, to a further fine of not more than \$500 for each day during which the offence continues.

(2) Any person who knows or has reason to believe that proceedings will be or have been commenced or that an order has been issued under this Part and who, without an order of the court or the consent of both spouses:

- (a) disposes of or encumbers any matrimonial home or household goods; or
- (b) removes from the matrimonial home any household goods, except in the case of an emergency;

is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000.

(3) No person who seizes or removes from the matrimonial home any household goods or who disposes of any matrimonial home or household goods pursuant to a valid lien, distress, execution or power of seizure or sale shall be convicted of an offence under subsection (2) where he establishes that he first made a demand for satisfaction of his claim to the spouse in whose favour an order for exclusive possession might be or has been made and gave that spouse a reasonable opportunity to pay the amount due.

(4) Any person who knowingly and wilfully refuses or neglects, without reasonable cause, to provide a discharge in accordance with subsection 10(1) is, in addition to any other liability under this Act, guilty of an offence and liable on summary conviction to a fine of not more than \$500 and, in the case of a continuing offence, to a further fine of not more than \$100 for each day during which the offence continues.

1979, c.M-6.1, s.18.

**Compensation where order not complied with or discharge not provided**

**19** Where a spouse has sustained financial loss as a result of the refusal or failure, without reasonable cause, of another person to comply with an order under section 5, 6 or 8 or to provide a discharge under section 10, he is entitled to compensation for the loss so sustained and, upon application, the court may make any order it thinks fit respecting compensation.

1979, c.M-6.1, s.19.

PART II

**Distribution of Matrimonial Property**

**Purpose**

**20** The purpose of this Act, and in particular of this Part, is to recognize that child care, household management and financial provision are the joint and mutual responsibilities of spouses and that inherent in the marital relationship there is joint contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities that entitles each spouse to an equal distribution of the matrimonial property, subject to the exceptions, exemptions and equitable considerations mentioned in this Act.

1979, c.M-6.1, s.20.

**Distribution of matrimonial property**

**21(1)** Upon application by a spouse for the distribution of matrimonial property, the court shall, subject to any exceptions, exemptions and equitable considerations mentioned in this Act, order that the matrimonial property or its value be distributed equally between the spouses.

(2) Subject to section 22, where, having regard to:

- (a) any written agreement between the spouses or between one or both spouses and a third party;
- (b) the length of time that the spouses have cohabited before and during their marriage;
- (c) the duration of the period during which the spouses have lived separate and apart;
- (d) the date when the matrimonial property was acquired;
- (e) the contribution, whether financial or in some other form, made directly or indirectly by a third party on behalf of a spouse to the acquisition, disposition, operation, management or use of the matrimonial property;

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- (f) any direct or indirect contribution made by one spouse to the career or career potential of the other spouse;
- (g) the extent to which the financial means and earning capacity of each spouse have been affected by the responsibilities and other circumstances of the marriage;
- (h) the fact that a spouse has made:
  - (i) a substantial gift of property to a third party; or
  - (ii) a transfer of property to a third party other than a *bona fide* purchaser for value;
- (i) a previous distribution of matrimonial property between the spouses by gift or agreement or pursuant to an order of any court of competent jurisdiction made before or after the coming into force of this Act;
- (j) a tax liability that may be incurred by a spouse as a result of the transfer or sale of matrimonial property or any order made by the court;
- (k) the fact that a spouse has dissipated matrimonial property;
- (l) subject to subsection 30(3), any benefit received or receivable by the surviving spouse as a result of the death of his spouse;
- (m) any maintenance payments payable for the support of a child;
- (n) interests of third parties in the matrimonial property;
- (o) any debts or liabilities of a spouse including debts paid during the course of the marriage;
- (p) the value of matrimonial property situated outside Saskatchewan;
- (q) any other relevant fact or circumstance;

the court is satisfied that it would be unfair and inequitable to make an equal distribution of matrimonial property or its value, the court may:

- (r) refuse to order any distribution;
- (s) order that all the matrimonial property or its value be vested in one spouse; or
- (t) make any other order that it considers fair and equitable.

1979, c.M-6.1, s.21.

**Distribution of matrimonial home**

**22(1)** Where a matrimonial home is a subject of an application for an order under subsection 21(1), the court shall, having regard to any tax liability, encumbrance or other debt or liability pertaining to the matrimonial home, distribute the matrimonial home or its value equally between the spouses except where the court is satisfied that it would be:

- (a) unfair and inequitable to do so, having regard only to any extraordinary circumstance; or
- (b) unfair and inequitable to the spouse who has custody of the children;

and in that case the court may:

- (c) refuse to order any distribution;
- (d) order that the entire matrimonial home or its value be vested in one spouse; or
- (e) order any distribution that it considers fair and equitable.

(2) Where there is more than one matrimonial home, the court may designate to which matrimonial home subsection (1) applies and any remaining matrimonial home shall be distributed in accordance with section 21.

1979, c.M-6.1, s.22.

**Property exempt from distribution**

**23(1)** Where matrimonial property, other than a matrimonial home or household goods, is:

- (a) property acquired before the marriage by a spouse by gift from a third party, unless it can be shown that the gift was conferred with the intention of benefitting both spouses;
- (b) property acquired before the marriage by a spouse by inheritance, unless it can be shown that the inheritance was conferred with the intention of benefitting both spouses;
- (c) property owned by a spouse before the marriage;

the fair market value of that property at the time of the marriage is, subject to subsection (4), exempt from distribution under this Part.

(2) Property acquired as a result of an exchange of property mentioned in subsection (1) is, subject to subsection (4), exempt from distribution under this Part to the extent of the fair market value of the original property mentioned in subsection (1) at the time of the marriage.

(3) Where matrimonial property, other than a matrimonial home or household goods, is:

- (a) an award or settlement of damages in tort in favour of a spouse, unless the award or settlement is compensation for a loss to both spouses;
- (b) money paid or payable under an insurance policy that is not paid or payable in respect of property, unless the proceeds are compensation for a loss to both spouses;
- (c) property acquired after a decree *nisi* of divorce, a declaration of nullity of marriage or a judgment of judicial separation is made in respect of the spouses;
- (d) property acquired as a result of an exchange of property mentioned in this subsection;
- (e) appreciation on or income received from and property acquired by a spouse with the appreciation on or income received from property mentioned in this subsection;

it is, subject to subsection (4), exempt from distribution under this Part.

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- (4) Where the court is satisfied that it would be unfair and inequitable to exempt property from distribution, the court may make any order that it considers fair and equitable with respect to the matrimonial property mentioned in this section.
- (5) In making an order under this section, the court shall have regard to:
- (a) any of the matters mentioned in clauses 21(2)(a) to (p);
  - (b) contributions in any form whatsoever made by the spouses to their relationship, children or property prior to their marriage;
  - (c) a contribution, whether financial or in any other form whatsoever, made by a spouse directly or indirectly to the acquisition, disposition, preservation, maintenance, improvement, operation, management or use of property mentioned in this section;
  - (d) the amount of other property available for distribution;
  - (e) any other relevant fact or circumstance.
- (6) All matrimonial property is presumed to be shareable unless it is established to the satisfaction of the court that it is property mentioned in this section.

1979, c.M-6.1, s.23.

**Property dealt with in interspousal contract exempt**

**24(1)** Notwithstanding any other provision of this Act, matrimonial property, including a matrimonial home and household goods, that is distributed or disposed of by an interspousal contract, or with respect to which an interspousal contract provides for possession, status or ownership, is exempt from distribution under this Part, unless at the time the interspousal contract was entered into it was, in the opinion of the court, unconscionable or grossly unfair and, in that case, the court shall distribute the property or its value in accordance with the provisions of this Act as though there were no interspousal contract, but the court may take the interspousal contract into consideration and give it whatever weight it considers reasonable.

(2) Where the spouses have entered into an interspousal contract and where an application is made under this Act respecting matrimonial property that is not distributed or disposed of by the interspousal contract, that property shall be distributed in accordance with this Act as though there were no interspousal contract.

1979, c.M-6.1, s.24.

**Immoral or improper conduct**

**25** For the purposes of making any determination under section 21, 22 or 23, no court shall have regard to immoral or improper conduct on the part of a spouse unless that conduct amounts to dissipation or has otherwise been substantially detrimental to the financial standing of one or both spouses.

1979, c.M-6.1, s.25.

**Power of court**

**26(1)** The court, in order to effect a distribution under this Part, may:

- (a) hear an application respecting matrimonial property notwithstanding that the spouse who made the application has no legal or equitable interest in the matrimonial property;
- (b) make any order that it considers fit in the circumstances whether or not it affects title to matrimonial property, and, without limiting the generality of the foregoing, the court may:
  - (i) order a spouse to pay money in a lump sum or over a period of time, with or without interest, or vest an interest in any matrimonial property in the other spouse;
  - (ii) order a spouse to pay to the other spouse a sum equivalent to the value of the other spouse's interest in any matrimonial property as determined by the court;
  - (iii) order that the matrimonial property or any part of the property be sold and that the proceeds be distributed between the spouses as the court directs;
  - (iv) prescribe the terms and conditions of a sale ordered under this section;
  - (v) order the partition or division of matrimonial property;
  - (vi) if matrimonial property is owned by spouses as joint tenants, sever the joint tenancy;
  - (vii) order the vesting of matrimonial property in one spouse or in both spouses in common;
  - (viii) order that a spouse create a trust under which matrimonial property would be held in trust for a spouse under any terms and conditions that the court thinks fit;
  - (ix) order the possession of matrimonial property by one spouse subject to any terms and conditions that the court thinks fit;
  - (x) declare that a spouse has no rights under *The Homesteads Act, 1989* with respect to all or any matrimonial property of the other spouse or that is transferred to the other spouse;
  - (xi) declare that a spouse has an interest in matrimonial property notwithstanding that the spouse in whose favour the order is made had no prior legal or equitable interest in the matrimonial property;
  - (xii) order a registrar of land titles to cancel, correct, substitute or issue any certificate of title or make any memorandum or entry thereon and to do every act necessary to give effect to the order;
  - (xiii) order a spouse, or any other person, to vacate any matrimonial property and provide for the enforcement of the order;

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(xiv) order a spouse to give security, upon any terms and conditions that the court thinks fit, for the performance of any obligation imposed by an order under this section, including a charge on property, and provide for the enforcement of that charge by sale or otherwise as necessary;

(xv) require a spouse, as a condition of an order, to surrender all present claims to matrimonial property in the name of the other spouse;

(xvi) vary, amend or discharge an order previously made under this Part or under *The Married Persons' Property Act*, any previous *Married Persons' Property Act*, *The Married Women's Property Act*, being chapter 304 of *The Revised Statutes of Saskatchewan, 1953*, or any previous *Married Women's Property Act*, where:

(A) subject to subsection (2), the spouses are still spouses within the meaning of this Act; and

(B) there has been a substantial change in the circumstances warranting the variation, amendment or discharge;

(xvii) order a distribution of matrimonial property in accordance with a settlement of, or an agreement respecting, an application for a matrimonial property order made or continued by a surviving spouse or continued by a personal representative;

(xviii) make an order with respect to any matter or give any direction that in the opinion of the court is necessary.

(2) Where a person is named in:

(a) an order under subclause (1)(b)(viii), (ix) or (xiv); or

(b) any order similar to an order mentioned in clause (a) and the circumstances require the court to review the order with a view to granting a discharge of the order or part of the order;

or where such an order is made against the estate or interest of a person, an application for an order under subclause (1)(b)(xvi) may be made, with leave of the court, by the person or his personal representative, whether or not the spouses to whom the order applied are still spouses.

(3) Where a spouse has an interest in a corporation and where it would not be reasonable to give the other spouse shares in the corporation, the court may order the spouse who has the interest in the corporation to pay to the other spouse, in addition to any other sums that may be payable under this Act, a sum no larger than the value of the benefit the spouse has in respect of the assets of the corporation.

1979, c.M-6.1, s.26; 1989-90, c.20, s.5.

**Disclosure of property by spouses**

**27(1)** Where an application is commenced under this Part, the court may order that a spouse shall file with the court and serve on the other spouse a statement, verified by oath, disclosing particulars of:

- (a) all his matrimonial property, whether it is situated in Saskatchewan or elsewhere;
  - (b) any matrimonial property disposed of by him within two years before the commencement of the application; and
  - (c) all his debts and liabilities.
- (2) A statement made under subsection (1) shall be in the form, and contain the information, prescribed in the rules of court.
- (3) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection (1) would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential and not form a part of the public record.

1979, c.M-6.1, s.27.

### PART III Dissipation, Transfer or Gift of Matrimonial Property

#### **Return of gift of property when insufficient consideration**

**28(1)** Where an application has been made for a matrimonial property order and the court is satisfied that:

- (a) a spouse has, before or after the coming into force of this Act:
  - (i) dissipated matrimonial property in whole or in part;
  - (ii) transferred matrimonial property to a third person for less than adequate consideration with the intention of defeating a claim that the other spouse may have under this Act; or
  - (iii) without the consent of the other spouse, made a substantial gift of matrimonial property to a third person; and
- (b) the dissipation occurred, or the transfer or gift was made, not more than two years before the day on which either spouse commenced the application for the matrimonial property order;

the court may:

- (c) when it makes a matrimonial property order, consider the matrimonial property dissipated, transferred or gifted to be part of the share of the spouse who dissipated, transferred or gifted the property;
- (d) subject to any terms and conditions that the court thinks fit, order the donee, or, subject to subsection (2), the transferee, to pay or transfer all or part of the matrimonial property to a spouse;
- (e) give judgment in favour of a spouse against the donee, or, subject to subsection (2), against the transferee, for a sum not exceeding the amount by which the share of that spouse under the matrimonial property order is reduced as a result of the transfer or gift.

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(2) Where subclause (1)(a)(ii) applies, the court may make an order under clause (1)(d) or (e) only if it is satisfied that the transferee accepted the matrimonial property transferred when he knew or ought to have known that the transfer was made with the intention of defeating a claim a spouse may have under this Act.

(3) The court may, notwithstanding clause 2(l), consider the value of the matrimonial property dissipated, transferred or gifted to be its fair market value, or any other value the court considers reasonable, at the time of the dissipation or disposition.

(4) Where a spouse applies for an order pursuant to clause (1)(d) or (e), the applicant shall serve the transferee or donee with a notice of the application, and the notice shall include all allegations made and the nature of the claim of the applicant as it affects the transferee or donee.

(5) A transferee or donee who is served with a notice under this section is deemed to be a party, as a defendant, to the application for the matrimonial property order with respect to any allegation or claim that affects him.

1979, c.M-6.1, s.28.

**Prevention of gift or sale**

**29(1)** Where the court is satisfied that a spouse:

- (a) is about to commit an act amounting to dissipation;
- (b) is about to abscond with any matrimonial property;
- (c) intends to transfer matrimonial property to a person for less than adequate consideration; or
- (d) intends to make a substantial gift of matrimonial property;

and that such action may defeat a claim of the other spouse under this Act, the court may:

- (e) make an order restraining the making of the transfer or gift or the absconding with the property;
- (f) make a receiving order or any other order that it thinks fit for the purpose of restraining the dissipation or further dissipation of the property or for the possession or delivering up, safekeeping and preservation of the property.

(2) An application for an order under subsection (1) may be made as an application in proceedings commenced under this Act, by notice of motion or in any other manner that may be presented in the rules of court.

(3) An application for an order under subsection (1) may be made *ex parte* and, where an application is made *ex parte*, the court may dispense with service of the notice of the application or direct that the notice of the application be served at any time and in any manner that it thinks fit.

(4) Every person who knowingly and wilfully refuses or neglects to comply with an order made under subsection (1) is, in addition to any other liability he may incur, guilty of an offence and liable on summary conviction to a fine of not more than \$1,000.

1979, c.M-6.1, s.29.

#### PART IV

### Application on Death of Spouse

#### Application by spouse of deceased

**30(1)** An application for a matrimonial property order may be made or continued by a surviving spouse after the death of the other spouse or may be continued by the personal representative of the deceased spouse.

(2) No application by a surviving spouse for a matrimonial property order may be commenced more than six months after the date of the issue of a grant of probate or administration for the estate of the deceased spouse.

(3) No court shall consider the amount payable to a spouse under *The Intestate Succession Act* in making a distribution of matrimonial property pursuant to an application made or continued by a surviving spouse or continued by the personal representative of a deceased spouse where the deceased spouse died intestate, and no order made under this Act affects the rights of the surviving spouse on intestacy.

1979, c.M-6.1, s.30.

#### Where estate is involved, Act applies *mutatis mutandis*

**31** Where an application is continued or commenced under section 30, this Act applies *mutatis mutandis* in respect of the estate of the deceased spouse, and the property of the deceased spouse, whether or not it has vested in the personal representative, is matrimonial property that is subject to this Act.

1979, c.M-6.1, s.31.

#### Suspension of administration of deceased's estate

**32** The court may make an order suspending in whole or in part the administration of the estate of a deceased spouse until an application for a matrimonial property order has been determined.

1979, c.M-6.1, s.32.

#### Consent to distribution of estate

**33(1)** Until the expiration of six months from the grant of probate of the will or administration of the estate of a deceased spouse, no personal representative shall encumber or distribute any portion of the estate to a beneficiary without the consent of the surviving spouse or an order of the court made on an application by notice of motion or in any other manner that may be prescribed in the rules of court.

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(2) Where:

- (a) a personal representative distributes any portion of the estate contrary to subsection (1); and
- (b) the court makes a matrimonial property order with respect to matrimonial property in the estate of the deceased spouse;

the personal representative is personally liable to the surviving spouse for any loss suffered by the surviving spouse as a result of that distribution.

1979, c.M-6.1, s.33.

**Distribution in accordance with court order**

**34(1)** Where an application for a matrimonial property order is made or continued by a surviving spouse or is continued by the personal representative of the deceased spouse, the personal representative of the deceased spouse shall hold the estate subject to any matrimonial property order that may be made, and no personal representative shall proceed with the distribution of the estate other than in accordance with and subject to the matrimonial property order.

(2) Unless he has the consent of the surviving spouse to the distribution, a personal representative who distributes a portion of the estate contrary to subsection (1) is personally liable to the surviving spouse for any loss suffered by the surviving spouse as a result of the distribution.

(3) No settlement or agreement made by a personal representative respecting an application that has been commenced for a matrimonial property order is valid as against a surviving spouse unless it is confirmed by an order of the court.

1979, c.M-6.1, s.34.

**Property deemed never part of estate**

**35** Money paid or property transferred to a surviving spouse under a matrimonial property order is deemed never to have been part of the estate of the deceased spouse where a claim is made against the estate:

- (a) by a beneficiary under a will;
- (b) by a beneficiary under *The Intestate Succession Act*;
- (c) by a dependant under *The Dependants' Relief Act*;
- (d) by a claimant in an action under *The Fatal Accidents Act*; or
- (e) by any creditor of the deceased spouse or of the estate, except where the court directs otherwise in the matrimonial property order.

1979, c.M-6.1, s.35.

**Personal rights only conferred**

**36** Notwithstanding any other Act or law, but subject to sections 8, 10 and 11 and subsections 26(2) and 30(1), the rights conferred on a person under this Act do not survive the death of that person for the benefit of his estate.

1979, c.M-6.1, s.36.

**Effect on *Dependants' Relief Act***

37(1) Nothing in this Act affects the right of a surviving spouse to make an application under *The Dependants' Relief Act*.

(2) An application by a surviving spouse under *The Dependants' Relief Act* may be joined with an application under this Part.

1979, c.M-6.1, s.37.

PART V  
**Interspousal Contracts**

**Interspousal contracts**

38(1) Where spouses have entered into an interspousal contract:

- (a) that deals with the possession, status, ownership, disposition or distribution of matrimonial property, including future matrimonial property;
- (b) that is in writing and signed by each spouse in the presence of a witness; and
- (c) in which each spouse has acknowledged, in writing, apart from the other spouse:
  - (i) that he is aware of the nature and the effect of the contract; and
  - (ii) that he is aware of the possible future claims to property he may have under this Act and that he intends to give up those claims to the extent necessary to give effect to the contract;

the terms of the contract mentioned in subsection (4) are, subject to section 24, binding between the spouses whether or not there is valuable consideration for the contract.

(2) The acknowledgment mentioned in subsection (1) shall be made before a lawyer other than the lawyer acting in the matter for the other spouse or before whom the acknowledgment is made by the other spouse.

(3) Any provision of an interspousal contract that is void or voidable is severable from the other provisions of the contract.

(4) An interspousal contract may:

- (a) provide for the possession, ownership, management or distribution of matrimonial property between the spouses at any time, including, but not limited to, the time of separation of the spouses, the dissolution of the marriage, or a declaration of nullity of marriage;
- (b) apply to matrimonial property owned by both spouses and by each of them at or after the time the contract is made; and
- (c) be entered into by two persons in contemplation of their marriage to each other, but is unenforceable until after the marriage.

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(4.1) Without limiting the generality of subsection (4), an interspousal contract entered into on or after June 4, 1986 may provide that, notwithstanding the *Canada Pension Plan*, as amended from time to time, there may be no division between the parties of unadjusted pensionable earnings pursuant to that Act.

(5) Where an interspousal contract has been entered into under this section, the spouses may enter into another contract amending, varying or cancelling the earlier contract, and the subsequent contract, if made in accordance with this section, takes precedence over the earlier contract.

1979, c.M-6.1, s.38; 1988-89, c.12, s.2.

**Contract unenforceable**

**39** Where, at the time any contract that purports to deal with the status, ownership and distribution of matrimonial property is entered into by spouses, whether or not it is an interspousal contract, one of the spouses knew or believed that the marriage was void, the contract is unenforceable by that spouse unless the court directs otherwise.

1979, c.M-6.1, s.39.

**Agreements between spouses**

**40** The court may, in any proceedings under this Act, take into consideration any agreement verbal or otherwise between spouses that is not an interspousal contract and may give that agreement whatever weight it considers reasonable.

1979, c.M-6.1, s.40.

**Agreements made before Act comes into force**

**41** Any written agreement made between spouses before the coming into force of this Act shall, in any proceeding under this Act, be given the same weight and consideration it would have been given had it been considered in any proceeding respecting the possession, status, ownership, distribution or other disposition of matrimonial property as between spouses before the coming into force of this Act.

1979, c.M-6.1, s.41.

**Vesting order *re* property distributed by interspousal contract**

**42** The court may, on application by a spouse who is a party to an interspousal contract, order the vesting of matrimonial property in accordance with the terms and conditions of the interspousal contract.

1979, c.M-6.1, s.42.

PART VI  
General

**Property remains separate**

**43** No provision of this Act vests any title to or interest in any matrimonial property of one spouse in the other spouse, and the spouse who owns the matrimonial property may, subject to subsection 18(2) and sections 28 and 50, any interspousal contract and any order of a court made under this Act, sell, lease, mortgage, hypothecate, repair, improve, demolish, spend or otherwise deal with or dispose of the property as if this Act had not been passed.

1979, c.M-6.1, s.43.

**Applications**

**44(1)** Where, in an application under this Act, it appears to the court that, for the appropriate determination of the affairs of the spouses, it is necessary or desirable to have other matters first or simultaneously determined, the court may direct that the application stand over until any applications are brought or matters determined that the court considers appropriate.

(2) Where an application is made to a court under this Act, no person who is a party to the proceeding shall make an application under this Act to any other court, but the court may order that the proceedings be transferred to a court having other jurisdiction where, in the opinion of the court, that court is more appropriate to determine any matters in issue that should be determined at the same time.

(3) An application under this Act shall be made in the manner prescribed in the rules of court.

(4) Where in any proceeding, other than a proceeding respecting a question of maintenance, a question of the possession or distribution of matrimonial property arises between spouses, the court shall decide the question as if it had been raised in proceedings under this Act.

1979, c.M-6.1, s.44.

**Third party interests**

**45** Where an order is sought under this Act respecting matrimonial property in which a third party has or may have an interest, the court may direct that the third party be served with notice of the application in any manner that the court thinks fit.

1979, c.M-6.1, s.45.

**Minor**

**46** A minor who is a spouse has the capacity to commence, conduct and defend proceedings under this Act without the intervention of a next friend or guardian *ad litem*, and may enter into an interspousal contract and give any consent required or authorized by this Act.

1979, c.M-6.1, s.46.

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## MATRIMONIAL PROPERTY

**Public may be excluded**

47 In any proceeding under this Act, the court or the Court of Appeal may exclude the public from a hearing, or any part thereof, where, in the opinion of the court or the Court of Appeal, the desirability of protecting against the consequences of possible disclosure of financial or personal matters outweighs the desirability of holding the hearing in public, and the court or the Court of Appeal may by order prohibit the publication of any matter connected with the application or given in evidence at the hearing.

1979, c.M-6.1, s.47.

**Public Trustee may be made party to proceedings**

48(1) Where the Public Trustee considers it necessary, he may, in accordance with the rules of court, apply to the court to be joined as a party to any proceedings under this Act, and the court may, at any time during the proceedings, where it thinks fit and regardless of whether an application is made by the Public Trustee, direct the Public Trustee to be so joined.

(2) Where an application under this Act is continued or commenced by a surviving spouse or continued by a personal representative and where there is any child, other than a child within the meaning of subclause 2(a)(ii), who has or may have an interest in the estate of the deceased spouse, notice of an application under this Act shall be served on the Public Trustee by pre-paid ordinary mail.

1979, c.M-6.1, s.48; 1983, c.80, s.14.

**Filing certificate of *lis pendens***

49 Sections 48 and 49 of *The Queen's Bench Act* apply, *mutatis mutandis*, in respect of any application or proceeding under this Act in which any title to land is brought into question.

1979, c.M-6.1, s.49.

**Presumption of advancement abolished**

50(1) The rule of law applying a presumption of advancement in questions dealing with the ownership of property as between husband and wife is hereby abolished, and in its place the rule of law applying a presumption of a resulting trust shall be applied in the same manner as if they were not married.

(2) Notwithstanding subsection (1):

(a) the fact that property is placed or taken in the name of both spouses as joint owners or tenants is *prima facie* proof that each spouse is intended to have, on a severance of the joint ownership or tenancy, a one-half beneficial interest in the property;

(b) money that is deposited with a financial institution in the name of both spouses is deemed to be in the name of the spouses as joint owners for the purposes of clause (a).

(3) Subsection (1) applies notwithstanding that the event giving rise to the presumption occurred before the coming into force of this section.

1979, c.M-6.1, s.50.

**Rights of new spouse**

**51** Where a person becomes the spouse of a person who is a party to an application under this Act that has not been concluded, the rights under this Act of the new spouse are subject to the rights under this Act of the former spouse.

1979, c.M-6.1, s.51.

**Rights additional**

**52** The rights conferred under this Act are in addition to and not in substitution for rights under equity or any other law.

1979, c.M-6.1, s.52.

**Notice**

**53** Any notice required to be given under section 10 or 15 shall be served personally or by registered mail addressed to the person to whom notice is to be given at his usual last known address and, where notice is served by registered mail, the service is deemed to have been made on the fifth day after the day of mailing.

1979, c.M-6.1, s.53.

**Service *ex juris***

**54** Service *ex juris* may be made without an order of the court but shall be made in any manner that may be prescribed by the rules of court.

1979, c.M-6.1, s.54.

**Appeal**

**55** An appeal lies to the Court of Appeal from any order or judgment made or given upon or pursuant to an application under this Act.

1979, c.M-6.1, s.55.

**Costs**

**56** The court may make any order as to costs of and consequent on an application under this Act as it thinks fit.

1979, c.M-6.1, s.56.

**Assessor**

**57(1)** The court may, where it thinks necessary, call in the aid of one or more assessors, including assessors who are specially qualified with respect to matters of taxation, and may try and hear the cause or matter wholly or partially with their assistance.

(2) Any remuneration to be paid to an assessor shall be determined by the court and the court may direct payment thereof by any of the parties.

1979, c.M-6.1, s.57.

**Rules**

**58** The judges of the Court of Queen's Bench, or a majority of them, may make rules on practice and procedure for the purpose of giving effect to the provisions of this Act and, without limiting the generality of the foregoing, may make rules:

- (a) as to the practice and procedure to be followed and the forms to be used under this Act;
- (b) prescribing the time within which documents are to be filed and served under this Act;
- (c) prescribing the information to be contained in a statement made under section 27;
- (d) governing the deposit or payment into or transfer out of court of any money or property, or the dealing therewith.

1979, c.M-6.1, s.58.

**Regulations**

**59** For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make regulations that are ancillary to and not inconsistent with this Act, and every regulation made under this section has the force of law.

1979, c.M-6.1, s.59.

**Repeal****Rev. Stat. c.M-6, section 22 repealed; transitional**

**60(1)** Section 22 of *The Married Persons' Property Act* is repealed.

(2) Where, in any other Act, there is a reference to section 22 of *The Married Persons' Property Act*, it is deemed to be a reference to this Act.

1979, c.M-6.1, s.60.