Proposals Relating to Saskatchewan Matrimonial Property Legislation: Report to the Minister of Justice: A Statutory Comment*

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The response to the Saskatchewan Matrimonial Property Act proposals has been understandably more political than legal. The changes, if enacted, would permit the courts a wide latitude for "individual justice" as opposed to the stratification imposed by the current legislation. It is surprising the number of husbands, aware of the proposals and concerned about the prospects of their matrimonial law suit, who have asked their lawyers to attempt to delay the proceedings until the proposals are enacted.

The changes are a small "p" political statement more than a legal analysis. The proposals constitute a retrenchment of the matrimonial legislation.

In the post-*Murdoch*[1] maelstrom, NDP Attorney General Roy Romanow enacted legislation in the mid-1970s permitting the division of matrimonial property. The Act was on the leading edge of so-called progressive thinking and was one of the first pieces of Canadian legislation of its kind. Those changes were effected by minor amendments to *The Married Women's Property Act* (re-named *The Married Persons' Property Act* in 1978).[2] Judges were permitted by the changed legislation to give some of the marital capital to the wife. Judges had a wide discretion.

In the lead up to the 1978 provincial election (under considerable pressure from women's groups in the province) Mr. Romanow enacted the far-reaching *Matrimonial Property Act* now extant in Saskatchewan. Particularly, in view of the pension decisions[3] and the decision of the

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*The relevant portions of the present Saskatchewan Matrimonial Proeprty Act, S.S. 1979, c. M-6.1, as amended, are attached as an appendix to this article.

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[1] *Murdoch v. Murdoch* [1975] 1 S.C.R. 423, 13 R.F.L. 185 (S.C.C.)

[2] R.S.S. 1978, c. M-6 [repealed S.S. 1984-85-86, c. E-10.3].

[3] *Tataryn v. Tataryn* (1984), 38 R.F.L. (2d) 272 (Sask. C.A.); *Fisher v. Fisher*, 31 R.F.L. (2d) 274, [1983] 2 W.W.R. 602 (Sask. Q.B.), additional reasons at (1983), 22 Sask. R. 238 (Sask. Q.B.).

Supreme Court of Canada concerning the "capital base theory"[4] (which had been used by some Saskatchewan judges to temper the legislation), it is the writer's view that Saskatchewan has the most "progressive" legislation in the nation. In some quarters, there has been a strong reaction to that legislation. Inflation dramatically increased the price of land and a series of court decisions, viewed by the public generally to be less than fair, have awarded very substantial amounts of money to female matrimonial litigants. A surprising number of the farm cases have actually been reported in the newspapers and the reaction of the rural community has been that it is somehow unfair that land which frequently has been in the family of the husband for two or three generations has to be sold or encumbered to pay wives. The majority of the public care little about matrimonial property legislation. However, far more people think the present legislation is unfair because it does too much for wives than the numbers who thought the pre-1974 legislation was unfair because it did nothing for wives. Women's groups, active in the 1970s on a wide range of issues, seem curiously inactive in the Saskatchewan of the mid-1980s. It is noteworthy that the reaction of the Saskatchewan public and media then and now focuses on farm wives.

It is interesting that just as Ontario is finally passing legislation that permits spouses to share on a truly equal basis in matrimonial property, Saskatchewan is considering retrenchment.

RECOMMENDATION NO. 1

Property acquired during marriage should be subject to equal division between spouses. The Court should have a structured discretion to depart from equal division where it would be fair and equitable to do so, but the relative contributions of the spouses should not be a factor for the Court to consider.

This reads as little change, but it is significant. It would be open to a court to find that a spouse had made no contribution to the marriage and should therefore no longer be able to rely on the partnership concept. The Saskatchewan Law Reform Commission states that the issue will not be the relative contribution of the spouses but an abdication of responsibility inherent in a wilful and nearly total failure to contribute. The Commission uses the words "nearly total failure". That sort of concept could be interpreted quite loosely by some of the judges of the Court, many of whom believe the present legislation unfair, as indeed it often is in individual cases. The whole issue regarding the

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[4] *Farr v. Farr* (1984), 39 R.F.L. (2d) 1 (S.C.C.).

matrimonial property legislation is the problem of the lack of individual fairness. The women's groups would say that, given a male-dominated court, the conservative nature of lawyers, the middle class background of lawyers, and the fact that most judges are elderly, judges are not qualified to decide what is fair in this area. Therefore, the "progressive" view would state that if some spouses (usually husbands) have to pay when that may be unfair to that man, injustice in a few cases is preferable to judges deciding whether a wife is "deserving", which would be likely to cause unfair low awards in far more cases. Recommendation No. 1 would be open to abuse by conservative judges.

RECOMMENDATION NO. 2

The Court should have a discretion to depart from equal division of matrimonial property where there has been a wilful and nearly total refusal to contribute to the marriage, except where there is a reasonable excuse for the absence of contribution.

Interpretation of "wilful" and interpretation of "nearly total refusal" will result in wide variations between the various judges based on their personal inclinations. Whenever that is the case, it encourages litigation. The whole principal of *stare decisis* is not necessarily decisions that are fair to the individuals before the Court, but decisions that are easily anticipated by potential litigants, thus avoiding unnecessary litigation. Keeping most people out of court is preferable to having everyone before the courts seeking individual justice.

The proposed section 27(1)(a) of the new proposed Act creates a subjective test of contribution which can only increase litigation. Counsel would be arguing the issue of substantial failure in a substantial percentage of cases.

RECOMMENDATION NO. 3

1. The value of property owned by either spouse at the date of marriage should be exempt from distribution.
2. Any increase in the value of property brought into marriage that results from an improvement to the property made by either spouse should ordinarily be subject to equal division between the spouses.
3. Any increase in the value of property brought into marriage that is not the result of an improvement to the property should ordinarily be exempt from division, except in the case of a long marriage where both spouses have made a contribution to the maintenance, preservation, or management of the property. The Court should have a discretion to increase or decrease the exemption in appropriate cases.

The problem is exemptions. Section 23 of the Saskatchewan Act allows the spouse bringing property into the marriage to deduct the marriage date value of that property. The problem is best demonstrated over farmland. A section of land might have been in the husband's family for three generations. It was gifted to him in 1959 with a value of $50,000. He married in 1960. He was divorced in 1980. The value on division was $800,000. He was entitled to a $50,000 deduction and the balance would be divided between himself and his wife. The effective standard of living produced by the section of land in 1980 was no different from the livelihood produced in 1960. The wife was sharing the inflation to which she made no contribution. That scenario is even less palatable in four- and five-year marriages. *Dembiczak,*[5] for instance, was reported in the press as a sixteen-month marriage resulting in Mrs. Dembiczak receiving an award including interest of almost $150,000. The nub of the exemption issue is whether distribution of property not resulting from contribution by either spouse is acceptable. Should that property go to the spouse that brought the property into the marriage? Most prairie residents would say yes because ownership of the land is more a way of life than a way to earn a living. Farm husbands as well as farm wives (prior to their separation at least) would overwhelmingly argue that substantial financial awards to wives take the land out of the hands of the family and deprive the next generation of the opportunity to farm. As each person hopes that their offspring will follow in their footsteps, into the sawmill or law practice, as a dentist or rabbi, so too does the rural community want their next generation to stay on the land. That is impossible if the separated wife moves to Palm Springs and obtains an award necessitating the sale of part of the economic farm unit.

The Americans get around the problem by tracing. The property accumulated as a result of the salary of the spouses is community property but assets brought into the marriage and the income flowing from the capital portion of such assets are separate property. Even with a family drugstore, the American approach would be to compute the income over the years flowing from the capital portion of the store (which remains separate property). The community property estate would owe some return on capital to the separate property estate of the spouse bringing the asset into the marriage. In the case of a stock portfolio, the receipt of funds and dividends would simply be traced.

Do the following two wives, who each marry 30-year-old male lawyers, make an equal contribution? Both lawyers work for Cross, Jona, Hugg & Forbes. Each earns $70,000, but one inherited a million dollars and supplements his

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[5]*Dembiczak v. Dembiczak* (1982), 32 R.F.L. (2d) 89 (Sask. Q.B.), reversed in part (1985), 48 R.F.L. (2d) 113 (Sask. C.A.). Leave to appeal to the Supreme Court of Canada refused (1986), 49 Sask. R. 80n (S.C.C.)

income with capital gains and dividends of $150,000 a year. The spouse of the poorer family has to teach school and take her children to the day care every morning. The spouse in the richer family has help in the home, monthly pedicures, and the responsibility of planning catered dinner parties and bi-monthly trips to Cartagena, Morocco, Jaipur, and Singapore. Both men leave their wives for another woman fifteen years after marriage.

It would be hard to imagine that society thinks it appropriate that, after 15 years on the *chaise longue* eating *bon bons*, the richer wife, with less work, merits two million extra in her award over that of the school teacher wife who gets three hundred thousand. The exemption law would only permit the wealthy husband to deduct the million dollars he brought in, but he cannot deduct any of the compounded income which has been produced in that 15-year period. How does someone who marries into wealth make a greater contribution than the hardworking spouse who marries less fortunately? Luck of the draw one supposes, but it is a hard concept to accept on the basis of contribution. The parents of the rich lawyer might be justified in thinking that since they saved their money to pass to their offspring, it is unfair that the spouse of their offspring gets this windfall benefit of their frugal lives. Our exemptions policy without the American concept of tracing appears unfair. The difficulty with the changes of sub-paragraphs 2. and 3. of Recommendation No. 3 are that for certain they would give rise to a renewed bout of litigation. Most American cases focus on tracing. What is separate property and what is community property are again the recurring questions. Should our legislation focus on doing individual justice, which causes a great deal of litigation, or on doing cheap majority justice, which is admittedly unfair in many circumstances?

The Saskatchewan CBA Committee to review the tentative proposals disagrees with Recommendation No. 3. That Committee would continue the present pattern of exemptions but allow section 23 exemptions to apply to the matrimonial home with the added protection of a section such as the proposed section 25, which would allow the Court to adjust the exemption when unfair.

RECOMMENDATION NO. 4

Gifts or inheritances received by a spouse during marriage should be presumed to be exempt from division. The presumption should be rebuttable, however, if it is shown that the gift or inheritance was intended for both spouses.

Society would not normally expect that gifts from one side of the family principally intended for that person be shared unless a shared intent is proven.

The appreciation of the gift could be subject to sharing under the suggested new section 25. If it is not, a problem arises concerning tracing of the return on the gift or inheritance from the date of acquisition. In any event, an issue will arise, similar to that encountered with section 23 exemptions, on whether the gift or inheritance has been used up during the course of the marriage. Surely, the matrimonial estate cannot owe the gift or inheritance to one of the spouses if that very money has been spent during the marriage.

RECOMMENDATION NO. 5

The matrimonial home should be given special status when matrimonial property is divided. Equal division of the home should be departed from only in exceptional circumstances, and when the home has been brought into marriage by one of the spouses the exemption should be limited to the value of the home at the date of marriage, less the value of any encumbrance on it.

The present Saskatchewan legislation divides the value of the home without deduction of the value brought into the marriage by one of the spouses. Marriages of very short duration are usually held to be outside of that rule and the spouse bringing the house into the marriage gets to keep the house. Recommendation No. 5 is therefore a change of considerable significance and a part of the entire series of recommendations which would substantially diminish the benefit derived by and large by women through the sweeping nature of the present Saskatchewan Act. Society has not found it unfair that women could at least expect to get half of the value of their home, whether that home was brought into the marriage by their husband or not. The CBA Committee approves of this change.

RECOMMENDATION NO. 6

The Homesteads Act[6] should be repealed and replaced with a provision in matrimonial property legislation requiring consent of both spouses to sale or encumbrance of the matrimonial home.

The homesteads legislation is 40 years out of date. It assumes the economic ignorance of women and attempts to protect them. The legislation is sexist andd by its very wording is likely unconstitutional as a result of the Charter of Rights and Freedoms. Some provision, however, should remain which would permit the registration of a claim analogous to the present homesteads *caveat*, which can be registered when one spouse or the other fears that the registered

[6]R.S.S.1978, c. H-5.

owner of the property may act illegally to try to transfer the property without his or her knowledge.

RECOMMENDATION NO. 7

Matrimonial home should be defined as the residence the spouses regarded as their last principal place of cohabitation, and should include only that portion of the surrounding land that may reasonably be regarded as necessary for the use and enjoyment of the residence.

The present definition of a matrimonial home includes the 160 acres surrounding the home. Again, this change, which is probably reasonable, chips away at the present Act which is very pro-female.

RECOMMENDATION NO. 8

Where spouses are not cohabiting when an application for division of matrimonial property is brought, the property should be valued for purposes of division as of the date of separation. The Court should make appropriate adjustments to take into account the use of, benefit from, and any increase or decrease in the value of matrimonial property between the date of valuation and the date of the order.

The CBA Committee agrees with this change. It is interesting to examine what the courts have thought was fair in past cases. The present legislation permits the judge to choose between the date of the commencement of the matrimonial property proceedings and the date of the trial. Recommendation No. 8 would make the time of division many months, and frequently years, before the date of application. In all but one or two percent of past cases, the date of adjudication has been chosen for valuation by the courts and thought to be the fairer date than the date of application. This change again would benefit men to the detriment of women. Taking away discretion through Recommendation No. 8 is inconsistent with the policy of giving greater discretion to the judges throughout the other recommendations. The best justification for the proposed changes is that judges should be given the flexibility to do individual justice, yet with this recommendation flexibility is removed, perhaps because the flexibility is normally exercised in favour of females against males.

In most situations, the husband has all of the assets. For example, a wife leaves the farm because the husband keeps beating her up, the husband moves in with his secretary but keeps running the lumber company; they both keep teaching school after separating but the husband maintains management over the stock portfolio and savings. In the alternative, the wife runs off with the next

door neighbour but the husband keeps the semi-trailer transport that he has always operated and upon which he is making payments. The point is that normally the husband has the assets. While he tends to get the benefit of being in control of those assets, normally, the wife gets the expense and difficulty of looking after the children. Why should the husband also get the benefit of the increase in value of those assets after separation? Surely, at least, one could leave that issue to be decided by the Courts. Adding separation as an option for the date of valuation might be a justifiable change, however.

RECOMMENDATION NO. 9

Where distribution of matrimonial property used for business or farming purposes would impair the viability of a business or farm, and where the use of such property is essential to enable a spouse to earn a living, the Court should have a discretion to defer distribution unless it would be unfair or impractical to do so. The Court should structure the deferral in such a manner as to ensure that the spouse whose share is deferred is adequately compensated, through payment of interest or otherwise.

The courts have thought in the past that they had some right to defer payments, both with matrimonial property and concerning the matrimonial home. A change is arguably unnecessary.

RECOMMENDATION NO. 10

1. Pension rights and benefits should be, by definition, matrimonial property.

2. Because of the complexity of the problem of determining a fair and equitable valuation of pension rights for purposes of division within the context of existing pension plans and regulations, the Court should retain a broad discretion to determine the value of pension rights in the context of individual cases. One useful method is to value the pension on the basis of employee contributions and interest during marriage.

3. If amendments to The Pension Benefits Act[7] reducing the variables that affect the valuation of pension rights are adopted, matrimonial property legislation should provide for valuation based on the actuarial values of pension rights calculated in accordance with the new pension regulations.

The Saskatchewan Law Reform Commission refers to dividing "contributions and accrued interest" as a "more straight-forward alternative" to

[7]R.S.S. 1978, c. P-6.

valuation based on actuarial evidence. That may be so, but it is also probably unfair, and judges would interpret the words to suggest this as the usual method of valuation. Again, with deference, the Commission seems to have found yet another way to benefit men and deprive women. Most of the serious pension cases involve government pensions of one sort or another. Government pensions can be very valuable given the long periods of employment unlike the private sector. Government pensions are not fully funded. The contributions are almost meaningless in relation to the value. The pensions for city dwellers oftentimes constitute the majority of the wealth of the matrimonial couple. The new Divorce Act, 1985 andd the recent interpretations of the old Act by the courts have largely ended long-term alimony. In Canada, we are adopting what the Americans call the "rehabilitative" alimony concept, meaning alimony for eighteen to sixty months while the receiving spouse re-educates or retrains. It would be unfair on the one hand to take away alimony and at the same time take away equal sharing of the pension rights by reducing pension entitlement to division of the contributions plus interest. With government pensions the contributions plus interest (because the government makes no matching contribution) are in the range of 20 per cent to 25 per cent of the present value of the future stream of pension benefits. When one reads Recommendation No. 10, only the last sentence of 2. refers to the changed method of valuation, but when reading the entire report, all of the comments of the Law Reform Commission address this issue. It is part of the pattern of trying to soft-pedal these very sweeping changes to the matrimonial property legislation.

RECOMMENDATION NO. 11

1. Dissipation should be defined as an extravagant or wasteful dealing with matrimonial property by a spouse without the consent of the other spouse.

2. No limitation period should apply to the tracing of matrimonial property gifted to a third party who knew or ought to have known that the gift was made with the intent to defeat a matrimonial property claim.

Saskatchewan presently has a two-year limitation on tracing actions to recover dissipated matrimonial property. This change is not objectionable.

RECOMMENDATION NO. 12

When an application is made for distribution of matrimonial property after the death of a spouse, unless a contrary intention appears from the will of the deceased spouse, the entitlement of the surviving spouse to matrimonial property owned by the deceased spouse should be reduced by the entitlement of the surviving spouse under the will or under The

Intestate Succession Act.[8]

Similarly, this change is reasonable.

RECOMMENDATION NO. 13

The Dependants' Relief Act[9] **should be amended to remove the rule that if an allowance is awarded to a spouse, it must be at least ther amount he or she would have received upon an intestacy.**

Saskatchewan has adopted the matrimonial property concepts from the United States. Again, comparisons to their law are appropriate. There the surviving spouse is automatically the owner of half of the community property. The claim on intestacy first attaches the separate property of the deceased and, if necessary, attaches the community property of the deceased.

Our whole concept of intestate succession and dependants' relief is to protect a spouse in need from the deceased who prefers the money to go to his children or some charity rather than having the money go where it is needed.

The strait-jacket created by the present legislation in conjunction with The Intestate Succession Act is not reasonable and flexibility for the Court would be preferable on an individual basis, but again one suspects that the legislative inflexibility was intended to keep people out of courts. There is almost nothing worse than children fighting with a 67-year-old woman (who unfortunately is their mother) over whether she needs an additional $40,000 or not. That kind of litigation is rendered all the worse by the fact that normally the legal bills are awarded out of the estate on a solicitor and client basis.

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[8]R.S.S. 1978, c. I-13.

[9]R.S.S. 1978, c. D-25.

Appendix

Saskatchewan Matrimonial Property Act
S.S. 1979, c. M-6.1 [am. 1979-80, c. 92, s. 57; 1983, c. 80, s.14]

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.

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;

(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 consider fair and equitable.

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 distriuted in accordance with section 21.

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 of settlement of damages in tort in favour of a spouse, unless the award of 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.

(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.

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.

Immoral or improper conduct.

25. For the purposes of making any determination under section 21, 22, or 23, no courts 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.

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* 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 acct necessary to give effect to the order;
(xiii) order a spouse, or any other person, to vacate any matrimonial property an provide for the enforcement of the order;
(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 an 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.

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 the 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.