

1977 BILL 102

Third Session, 18th Legislature, 26 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 102

THE MATRIMONIAL PROPERTY ACT

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

BILL 102

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THE MATRIMONIAL PROPERTY ACT

(Assented to , 1977)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1 In this Act

- (a) "Court" means the Supreme Court of Alberta;
- (b) "spouse" includes a former spouse and a party to a marriage referred to in section 2(1);
- (c) "time of marriage" means the day on which the spouses went through a form of marriage.

2(1) This Act applies to the parties to a marriage notwithstanding that the marriage is

- (a) void, or
- (b) voidable.

(2) Nothing in this Act confers a right on a spouse who at the time of marriage knew or had reason to believe that the marriage was void.

3(1) Subject to subsection (2), an application may be made by a spouse for an order under this Act where

- (a) the habitual residence of both spouses is in Alberta, whether or not the spouses are living together,
- (b) the last joint habitual residence of the spouses was in Alberta, or
- (c) the spouses have not established a joint habitual residence since the time of marriage but the habitual residence of each of them at the time of marriage was in Alberta.

Explanatory Notes

General. This Bill will enable the Supreme Court of Alberta to order a division of property between spouses, or in certain situations, former spouses, in the discretion of the Court but subject to the guidelines stipulated in the Bill.

The Bill does not deal with maintenance or alimony.
See also Bill 103, The Matrimonial Home Possession Act.
This Bill and Bill 103 are intended to be given first reading only at the present session.

1 Definitions.

2 Application of the Act to void and voidable marriages.

3 An application may be made by a spouse habitually resident in Alberta.

(2) Where a petition is issued under the *Divorce Act* (Canada) in Alberta, the petitioner or the respondent may make an application for an order under this Act.

4 The rights conferred on a person by this Act do not survive the death of that person for the benefit of his estate except as provided for by this Act.

5 Proceedings under this Act may be commenced

(a) by statement of claim, or

(b) by originating notice.

6(1) Where an application is made under this Act, the Court may determine any matter respecting the division of property between spouses including the making of any declaration that it considers just with respect to the status, ownership or possession of any property.

(2) Where any question respecting property arises between spouses in any other matrimonial cause, the Court may decide the question as if it had been raised in proceedings under this Act.

(3) Where in an application under this Act it appears to the Court that it is necessary or desirable to have other matters determined first or at the same time, the Court may direct that the application be adjourned until those matters are determined or brought before the Court.

7(1) The Court may make an order under this Act

(a) if

(i) a decree nisi of divorce,

(ii) a decree nisi of nullity of marriage, or

(iii) a judgment of judicial separation,

has been granted,

(b) if it is satisfied that the spouses have been living separate and apart

(i) for a continuous period of at least one year immediately prior to the making of the application, or

(ii) for a period of less than one year immediately prior to the making of an application if, in the opinion of the

4 Rights conferred by the Act are personal rights only except as otherwise provided.

5 Initiation of proceedings.

6 General power of the Court.

7 Conditions under which the Court may make an order under this Act.

Court, there is no possibility of the reconciliation of the spouses,

(c) if it is satisfied that the spouses are living separate and apart at the time the application is made and one spouse

(i) has made or intends to make a substantial gift of property to a third party, or

(ii) has transferred or intends to transfer property to a third party who is not a bona fide purchaser for value

with the intention of defeating a claim to property a spouse may have under this Act, or

(d) if it is satisfied that the spouses are living separate and apart and one spouse is dissipating property to the detriment of the other spouse.

(2) The Court may make an order under subsection (1)(a) notwithstanding that an order has been made under subsection (1)(b), (c) or (d).

(3) The spouses may be held to be living separate and apart notwithstanding that they have continued to reside in the same residence or that either spouse has rendered some household service to the other during the period of separation.

(4) For the purposes of subsection (1)(b) the period during which the spouses have been living separate and apart shall not be considered to have been interrupted by reason only that there has been a resumption of cohabitation by the spouses during a single period of not more than 90 days with reconciliation as its primary purpose but any period of reconciliation shall not be included in computing the period during which the spouses are living separate and apart.

8(1) An application for an order under section 7(1)(a) must be made within 2 years after the date on which the decree or judgment is granted.

(2) An application for an order under section 7(1)(b) must be made within 2 years after the date of separation of the spouses.

(3) For the purposes of subsection (2) any single period of not more than 90 days during which the spouses resumed cohabitation with reconciliation as its primary purpose shall not be included in computing the period during which the spouses are living separate and apart.

(4) An application for an order under section 7(1)(c) must be made not later than one year after the date of the gift or transfer.

8 Limitation periods for applications for an order under section 7.

9 In exercising its powers under this Act the Court shall have regard to the following matters:

(a) the contribution made by each spouse to the welfare of the family, including a contribution made as a homemaker or parent;

(b) the contribution, whether financial or in some other form, made by a spouse directly or indirectly to the acquisition, conservation, improvement, operation or management of a business, farm, enterprise or undertaking owned or operated by one or both spouses or by one or both spouses and any other person;

(c) the financial contribution made directly or indirectly by or on behalf of a spouse to the acquisition, conservation or improvement of property;

(d) the income, earning capacity, property and other financial resources

(i) that each spouse had at the time of marriage,

(ii) that each spouse has at the time of the hearing, and

(iii) that each spouse is likely to have in the foreseeable future;

(e) the financial needs, liabilities, obligations and responsibilities that each spouse has or is likely to have in the foreseeable future;

(f) the age of each spouse;

(g) the effect of a transfer of property or payment of money

(i) on the earning capacity of a spouse, or

(ii) on the value of the property of a spouse;

(h) the health of each spouse including any physical or mental disability;

(i) the duration of the marriage;

(j) the conduct of the spouses;

(k) whether the property was acquired

(i) before the time of marriage,

(ii) during the marriage,

(iii) when the spouses were living separate and apart, or

9 Matters that the Court is to take into consideration in exercising its powers under this Act.

(iv) after a decree of divorce, decree of nullity of marriage or a judgment of judicial separation;

(l) the manner in which property was acquired whether

(i) by the effort of one or both spouses,

(ii) by gift to one or both spouses, or

(iii) by inheritance;

(m) the terms of any agreement, whether oral or written, between the spouses;

(n) that a spouse has made or intends to make

(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;

(o) any previous distribution of property between the spouses by gift or agreement;

(p) any prior order made by a court;

(q) any tax liability that may be incurred by a spouse as a result of the transfer or sale of property;

(r) the law of any jurisdiction in which the spouses had a joint habitual residence during the period of the marriage;

(s) any fact or circumstance that is relevant.

10(1) In order to distribute the property of spouses fairly and equitably between them, as far as it is practical to do so, the Court may do any or all of the following:

(a) order a spouse to pay money or transfer an interest in property to the other spouse;

(b) order that property be sold and that the proceeds be divided between the spouses as the Court directs;

(c) by order declare that a spouse has an interest in property notwithstanding

(i) that the legal or equitable interest of the spouses in the property is in any way defined, or

(ii) that the spouse in whose favour the order is made has no legal or equitable interest in the property.

10 Power of the Court to make orders transferring property and money between spouses.

(2) To give effect to an order under subsection (1) the Court may do any or all of the following:

(a) order a spouse to make payment over a period of time with or without interest;

(b) order a spouse to give security for all or part of any payment;

(c) charge property with the payment of all or part of the order and provide for the enforcement of the charge;

(d) prescribe the terms and conditions of a sale ordered under subsection (1);

(e) require a spouse, as a condition of obtaining an order, to surrender all claim to property in the name of the other spouse;

(f) require a spouse, as a condition of obtaining an order, to execute a release of dower rights under *The Dower Act* with respect to any or all property owned by the other spouse;

(g) impose a trust in favour of a spouse with respect to an interest in property;

(h) vary the terms of an order made under subsection (1) in accordance with this subsection;

(i) where property is owned by spouses as joint tenants, sever the joint tenancy;

(j) make any other order that in the opinion of the Court is necessary.

11(1) Where the Court is satisfied that a spouse intends to make a substantial gift of property or transfer of property to other than a bona fide purchaser for value which may defeat a claim of the other spouse under this Act, the Court may, by order, restrain the making of the gift or transfer.

(2) An application for an order under subsection (1) may be made while the spouses are cohabiting.

(3) An application for an order under subsection (1) may be made ex parte.

12(1) Subject to section 7, the Court may make an order under this Act if an application is made by the spouse of a deceased person.

11 The Court has power to prevent the gift or sale of property other than for value.

12 The Court may make an order under this Act on application by the spouse of a deceased person.

(2) An application may be made for an order under this section by the spouse of a deceased person not more than 6 months after the date of death of the deceased person.

13 In exercising its powers under section 12 the Court shall have regard to

- (a) the provisions of section 9, and
- (b) any benefits received by the surviving spouse or the estate as a result of the death of the deceased spouse.

14 The Court may make an order suspending in whole or in part the administration of the deceased's estate until an application under this Act has been heard.

15(1) Any money paid to a spouse or property transferred to a spouse under an order made by the Court under section 12 is deemed never to have been part of the estate of the deceased spouse with respect to a claim against the estate

- (a) by a beneficiary under a will,
- (b) by a beneficiary under *The Intestate Succession Act*, or
- (c) by a dependant under *The Family Relief Act*.

(2) An order made under section 12 is binding on the Crown.

16(1) Nothing in this Act affects the right of a surviving spouse to make an application under *The Family Relief Act*.

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

17 This Act comes into force on a date to be fixed by Proclamation.

13 Matters the Court must take into consideration.

14 The Court may suspend the administration of the deceased spouse's estate.

15 Property deemed never to have been part of the estate of the deceased spouse.

16 Effect on The Family Relief Act.