

The Family Property Act

being

Chapter F-6.3* of the *Statutes of Saskatchewan, 1997* (effective March 1, 1998) as amended by the *Statutes of Saskatchewan, 1998, c.48; 2000, c.70; 2001, c. 34 and 51; 2010, c.10; and 2012, c.24.*

formerly

The Matrimonial Property Act, 1997, being
Chapter M-6.11 of the *Statutes of Saskatchewan, 1997.*

*NOTE: The chapter number and Title of this Act were changed by S.S. 2001, c.51.

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 F-6.3

An Act respecting the Possession and Distribution of Property between Spouses

PART I

Short Title and Interpretation

Short title

1 This Act may be cited as *The Family Property Act*.

2001, c.51, s.11.

Interpretation

2(1) In this Act:

“**child**” means a child of a spouse who is:

- (a) under the age of 18 years; or
- (b) 18 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 that charge or to provide himself or herself with the necessaries of life;

and includes:

- (c) any person to whom both spouses stand in the place of a parent; or
- (d) any person of whom either spouse is a parent and to whom the other spouse stands in the place of a parent; (*«enfant»*)

“**corporation**” means a body corporate wherever or however incorporated, whether or not it is actively carrying on business; (*«personne morale»*)

“**court**” means the Family Law Division of the Court of Queen’s Bench; (*«tribunal»*)

“**dissipate**” means to jeopardize the financial security of a household by the squandering of property; (*«dilapider»*)

“**family home**” means, subject to subsection (2), property:

- (a) that is:
 - (i) 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 pursuant to a partnership or trust or an interest as a purchaser pursuant to an agreement for sale; or
 - (ii) 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

(b) 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:

(c) a house or part of a house, including the land appurtenant to it consisting of not more than 65 hectares;

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

(e) a trailer or vehicle commonly referred to as a mobile home, including the land appurtenant to it consisting of not more than 65 hectares;

(f) a unit as defined in *The Condominium Property Act, 1993*, including the owner's share in the common property; or

(g) a suite; (« *foyer familial* »)

“family property” means any real or personal property, regardless of its source, kind or nature, that, at the time an application is made pursuant to 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 the following:

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

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

(c) 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;

(d) property mentioned in section 28; (« *bien familial* »)

“family property order” means an order of a court made pursuant to this Act or *The Matrimonial Property Act*; (« *ordonnance relative aux biens familiaux* »)

“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, jewellery 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; (« *objets ménagers* »)

“interspousal contract” means a binding contract made in accordance with section 38; (« *contrat familial* »)

“personal representative” includes a trustee; (« *représentant successoral* »)

“**Registrar of Titles**” means the Registrar as defined in *The Land Titles Act, 2000*; (« *registraire des titres fonciers* »)

“**spouse**” means either of two persons who:

- (a) at the time an application is made pursuant to this Act, is legally 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;
- (b) 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 two years preceding the making of an application pursuant to this Act; or
- (c) is cohabiting or has cohabited with the other person as spouses continuously for a period of not less than two years;

and includes:

- (d) a surviving spouse who continues or commences an application pursuant to section 30 and who was the spouse, within the meaning of clause (a), (b) or (c), of the deceased spouse on the day of the spouse’s death; and
- (e) where the applicant is a spouse within the meaning of clause (b), the other party to the void marriage; (« *conjoint* »)

“**value**” means:

- (a) the fair market value at the time an application is made pursuant to this Act, or at the time of adjudication, whichever the court thinks fit; or
- (b) if a fair market value cannot be determined, any value at the time an application is made pursuant to this Act, or at the time of adjudication, that the court considers reasonable. (« *valeur* »)

(2) For the purposes of Parts IV, V and VI, a family home must also meet the requirements of family property as defined in subsection (1).

1997, c.M-6.11, s.2; 2000, c.70, s.14; 2001, c.51, s.8 and 11; 2010, c.10, s.5.

PART II Preliminary Matters

Application of Act

3 This Act applies notwithstanding that:

- (a) the spouses entered into the spousal relationship before the coming into force of this Act or *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001 (No. 2)*;
- (b) the family property in issue was acquired before the coming into force of this Act or *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001 (No. 2)*; or

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(c) a proceeding to determine the rights as between spouses with respect to family property has been commenced before the coming into force of this Act or *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001 (No. 2)*.

2001, c.51, s.8.

Time limitation on application

3.1 Subject to section 8 and subsections 26(4), 29(3) and 30(2), an application by a person who is a spouse within the meaning of clause (c) of the definition of “**spouse**” in subsection 2(1) must be brought within 24 months after the cohabitation ceases.

2001, c.51, s.8.

PART III

Possession of Family Home or Household Goods**Right to possession**

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

- (a) section 43;
- (b) any order made pursuant to section 5, 6 or 8 whereby one spouse is given possession of the family home or household goods, as the case may be, to the exclusion of the other;
- (c) any other order made pursuant to this Act, unless the court directs otherwise;
- (d) any other order pertaining to the possession of the family home or household goods that was made by a court of competent jurisdiction before the coming into force of this Act or *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001 (No. 2)*;
- (e) any interspousal contract or, where the court thinks fit, any other written agreement between the spouses.

1997, c.M-6.11, s.4; 2001, c.51, s.8 and 11.

Exclusive possession of family home

5(1) For the purposes of this section, “**exclusive possession**” includes the right of occupancy. (*«possession exclusive»*)

(2) Notwithstanding any order made pursuant to Part IV, V or VI, and subject to section 7, the court may, on application by a spouse, make any order it thinks fit, including any of the following:

- (a) order that spouses are no longer bound to cohabit;
- (b) subject to any terms and conditions that the court thinks fit, direct that a spouse be given exclusive possession of a family home or part of it 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 family home;

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- (d) restrain a spouse from entering or attending at or near a family home;
 - (e) fix any rights of spouses that may arise as a result of the occupancy of a family 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 family home;
 - (f) authorize the disposition or encumbrance of the interest of a spouse in a family home subject to the right of exclusive possession contained in the order;
 - (g) fix the obligation to repair and maintain a family home;
 - (h) fix the obligation to pay, and the responsibility for, any liabilities that may arise out of the occupation of a family home;
 - (i) direct a spouse to whom exclusive possession of a family home is given to make any payment to the other spouse that is prescribed in the order;
 - (j) where a family home is leased by one or both spouses pursuant to 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 family home from the application of this Part.
- (3) An order for exclusive possession pursuant to this section does not itself negate the applicability of clause 93(1)(l) of *The Enforcement of Money Judgments Act* to that family home with respect to either spouse.

1997, c.M-6.11, s.5; 2001, c.51, s.11; 2010, c.10, 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 pursuant to subsection (1) may be made subject to any terms and conditions and for any period that the court considers necessary.
- (3) In making an order pursuant to this section, the court shall consider any possible rights, obligations or liabilities that may arise as a result of the order and may:
- (a) fix the rights and the responsibility for any of those obligations or liabilities; and
 - (b) make any order the court thinks fit in order to give effect to the fixing of those rights and responsibilities.

1997, c.M-6.11, s.6.

Powers of court

- 7** In exercising its powers pursuant to 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 spouse;

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- (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 or *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001 (No. 2)* with respect to the distribution or possession of family 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.

1997, c.M-6.11, s.7; 2001, c.51, s.8 and 11.

Variation, discharge or suspension of order

8(1) Where a court is satisfied that there has been a material change in circumstances, the court may discharge, vary or suspend an order made:

- (a) pursuant to this Part; or
 - (b) with respect to the possession of a family home or household goods by any court before the coming into force of this Act or *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001 (No. 2)*.
- (2) An application for an order pursuant to subsection (1) may be made by:
- (a) a person named in an order mentioned in subsection (1);
 - (b) a person against whose estate or interest the order was made; or
 - (c) the personal representative of a person mentioned in clause (a) or (b).

1997, c.M-6.11, s.8; 2001, c.51, s.8 and 11.

Registration of order for possession of family home

9(0.1) In this section and in section 10:

“Land Titles Registry” means the land titles registry as defined in *The Land Titles Act, 2000*; (« Réseau d’enregistrement des titres fonciers »)

“Personal Property Registry” means the Personal Property Registry continued pursuant to section 42 of *The Personal Property Security Act, 1993*; (« Réseau d’enregistrement des biens personnels »)

- (1) An interest based on an order made pursuant to section 5 or 8 with respect to a family home may be registered in the Land Titles Registry against affected titles if the family 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.
- (2) An interest based on the order made pursuant to section 5 or 8, on registration in the Land Titles Registry, binds an estate or interest of any description that the spouse or spouses have in the property to the extent stipulated in the order.
- (3) An interest based on an order made pursuant to section 6 or 8 with respect to household goods may be registered in the Personal Property Registry using the name of the owner of the household goods as the registration criterion.

1997, c.M-6.11, s.9; 2000, c.70, s.15; 2001, c.51, s.11; 2010, c.10, s.5.

Discharge of registered order

10(1) Where an order that forms the basis of an interest registered pursuant to subsection 9(1) or (3) and that grants a spouse exclusive possession of a family home or household goods terminates or where the right of exclusive possession of a spouse who is named in the order terminates, or where a spouse who has been granted exclusive possession dies, that spouse, or that spouse's personal representative, as the case may be, shall, on 10 days' written notice in accordance with section 53, provide a discharge in accordance with subsections (2) and (3).

- (2) The discharge mentioned in subsection (1) must be provided to:
- (a) the spouse against whose estate or interest the order was made;
 - (b) the personal representative of that spouse; or
 - (c) any third party having an interest in the property affected by the order.
- (3) A discharge mentioned in subsection (1) must:
- (a) be in the form prescribed in the regulations; and
 - (b) discharge any interest with respect to possession that the spouse in possession may have had pursuant to the order.
- (4) An application for discharge:
- (a) of the interest registered pursuant to subsection 9(1), accompanied by the discharge mentioned in subsection (1), may be submitted to the Land Titles Registry; and
 - (b) of the interest registered pursuant to subsection 9(3), accompanied by the discharge mentioned in subsection (1), may be submitted to the Personal Property Registry.

1997, c.M-6.11, s.10; 2000, c.70, s.16; 2001, s.51, s.11; 2010, c.10, s.5.

Cancellation of registration of order

11(1) A person, or the personal representative of a person, against whose property an interest based on the order is registered pursuant to subsection 9(1) or (3) may apply to the court for an order directing the Registrar of Titles to discharge the registration.

- (2) The court may make an order pursuant to this section on any terms and conditions that it thinks fit.

1997, c.M-6.11, s.11; 2000, c.70, s.17; 2010, c.10, s.5.

Disposing or encumbering property

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

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(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 family home for which that consent was required.

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

1997, c.M-6.11, s.12; 2001, c.51, s.11.

Termination of right of possession

13 No right of a spouse to exclusive use or possession ordered pursuant to 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.

1997, c.M-6.11, s.13.

Provision in certain agreements void

14 Notwithstanding any other Act, where an order is made pursuant to this Part vesting a right of exclusive possession of the family 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 stating that the rights of the contracting spouse or spouses pursuant to 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.

1997, c.M-6.11, s.14; 2001, c.51, s.11.

Right of redemption, etc.

15(1) Where a person is proceeding to realize on a lien, encumbrance or judgment or exercises a forfeiture against property that is subject to an order pursuant to this Part, the spouse who has the right of possession by virtue of an order pursuant to section 5, 6 or 8:

(a) 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

(b) 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 pursuant to the right conferred by clause (1)(a), the payment shall be applied in satisfaction of the claim giving rise to the lien, encumbrance, judgment or forfeiture.

(3) Notwithstanding any other Act, where a person who commences a proceeding to realize on a lien, encumbrance or judgment or to exercise a forfeiture does not have sufficient particulars for the purpose of personally serving a spouse entitled to notice pursuant to clause (1)(b), 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.

(4) Any final order in a proceeding continued in accordance with subsection (3) terminates the rights of the spouse pursuant to this section.

1997, c.M-6.11, s.15; 2010, c.10, s.5.

Rights additional

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

1997, c.M-6.11, s.16.

Ex parte application

17 An order may be made pursuant to this Part on an *ex parte* application by a spouse who is residing in the family 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 to any other person residing in the family home.

1997, c.M-6.11, s.17; 2001, c.51, s.11.

Offences

18(1) Any person who knowingly and wilfully refuses or neglects, without reasonable cause, to comply with an order pursuant to section 5, 6 or 8 made against that person is, in addition to any other liability pursuant to this Act, guilty of an offence and liable on summary conviction:

- (a) to a fine of not more than \$1,000; and
- (b) 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 pursuant to this Part and who, without an order of the court or the consent of both spouses:

- (a) disposes of or encumbers any family home or household goods, is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000; or
- (b) removes from the family 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 family home any household goods or who disposes of any family home or household goods pursuant to a valid lien, distress, execution or power of seizure or sale is to be convicted of an offence pursuant to subsection (2) where that person establishes that he or she:

- (a) first made a demand for satisfaction of the claim to the spouse in whose favour an order for exclusive possession might be or has been made; and
- (b) gave that spouse a reasonable opportunity to pay the amount due.

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(4) Any person who knowingly and wilfully refuses or neglects, without reasonable cause, to provide a discharge in accordance with section 10 is, in addition to any other liability pursuant to this Act, guilty of an offence and liable on summary conviction:

- (a) to a fine of not more than \$500; and
- (b) in the case of a continuing offence, to a further fine of not more than \$100 for each day during which the offence continues.

1997, c.M-6.11, s.18; 2001, c.51, s.11.

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 made pursuant to section 5, 6 or 8 or to provide a discharge pursuant to section 10, the spouse is entitled to compensation for the loss so sustained and, on application, the court may make any order it thinks fit respecting compensation.

1997, c.M-6.11, s.19.

PART IV**Distribution of Family 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 spousal 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 family property, subject to the exceptions, exemptions and equitable considerations mentioned in this Act.

1997, c.M-6.11, s.20; 2001, c.51, s.8 and 11.

Distribution of family property

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

(2) Subject to section 22, where, having regard to the matters mentioned in subsection (3), the court is satisfied that it would be unfair and inequitable to make an equal distribution of family property or its value, the court may:

- (a) refuse to order any distribution;
- (b) order that all the family property or its value be vested in one spouse; or
- (c) make any other order that it considers fair and equitable.

- (3) For the purposes of subsection (2), the court shall have regard to the following:
- (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;
 - (c) the duration of the period during which the spouses have lived separate and apart;
 - (d) the date when the family 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 family 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 spousal relationship;
 - (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 family 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 or *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001 (No. 2)*;
 - (j) a tax liability that may be incurred by a spouse as a result of the transfer or sale of family property or any order made by the court;
 - (k) the fact that a spouse has dissipated family property;
 - (l) subject to subsection 30(3), any benefit received or receivable by the surviving spouse as a result of the death of his or her spouse;
 - (m) any maintenance payments payable for the support of a child;
 - (n) interests of third parties in the family property;
 - (o) any debts or liabilities of a spouse, including debts paid during the course of the spousal relationship;
 - (p) the value of family property situated outside Saskatchewan;
 - (q) any other relevant fact or circumstance.

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22(1) Where a family home is the subject of an application for an order pursuant to subsection 21(1), the court, having regard to any tax liability, encumbrance or other debt or liability pertaining to the family home, shall distribute the family 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.
- (2) Where clause (1)(a) or (b) applies, the court may:
- (a) refuse to order any distribution;
 - (b) order that the entire family home or its value be vested in one spouse; or
 - (c) order any distribution that the court considers fair and equitable.
- (3) Where there is more than one family home, the court may designate to which family home this section applies, and any remaining family home is to be distributed in accordance with section 21.

1997, c.M-6.11, s.22; 2001, c.51, s.11.

Property exempt from distribution

23(1) Subject to subsection (4), the fair market value, at the commencement of the spousal relationship, of family property, other than a family home or household goods, is exempt from distribution pursuant to this Part where that property is:

- (a) acquired before the commencement of the spousal relationship 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) acquired before the commencement of the spousal relationship by a spouse by inheritance, unless it can be shown that the inheritance was conferred with the intention of benefitting both spouses; or
 - (c) owned by a spouse before the commencement of the spousal relationship.
- (2) Subject to subsection (4), property acquired as a result of an exchange of property mentioned in subsection (1) is exempt from distribution pursuant to this Part to the extent of the fair market value of the original property mentioned in subsection (1) at the commencement of the spousal relationship.
- (3) Subject to subsection (4), family property, other than a family home or household goods, is exempt from distribution pursuant to this Part where that property 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 pursuant to an insurance policy that is not paid or payable with respect to property, unless the proceeds are compensation for a loss to both spouses;

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- (c) property acquired after a decree *nisi* of divorce, a declaration of nullity of marriage or a judgment of judicial separation is made with respect to the spouses or, where the spouses are spouses within the meaning of clause (c) of the definition of “**spouse**” in subsection 2(1), property acquired more than 24 months after cohabitation ceased;
 - (d) property acquired as a result of an exchange of property mentioned in this subsection; or
 - (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.
- (4) Where the court is satisfied that to exempt property from distribution would be unfair and inequitable, the court may make any order that it considers fair and equitable with respect to the family property mentioned in this section.
- (5) In making an order pursuant to this section, the court shall have regard to the following:
- (a) any of the matters mentioned in clauses 21(3)(a) to (p);
 - (b) contributions in any form made by the spouses to their relationship, children or property prior to the commencement of their spousal relationship;
 - (c) a contribution, whether financial or in any other form, 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 family property is presumed to be shareable unless it is established to the satisfaction of the court that it is property mentioned in this section.

1997, c.M-6.11, s.23; 2001, c.51, s.8 and 11.

Property dealt with in interspousal contract exempt

24(1) Subject to subsection (2), but notwithstanding any other provision of this Act, family property, including a family home and household goods, that is distributed or disposed of by an interspousal contract, or with respect to which an interspousal contract provides for its possession, status or ownership, is exempt from distribution pursuant to this Part.

(2) If at the time the interspousal contract was entered into it was, in the opinion of the court, unconscionable or grossly unfair, the court shall distribute the property or its value in accordance with 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.

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(3) Where the spouses have entered into an interspousal contract and where an application is made pursuant to this Act respecting family 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.

1997, c.M-6.11, s.24; 2001, c.51, s.11.

Immoral or improper conduct

25 For the purposes of making any determination pursuant to 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.

1997, c.M-6.11, s.25.

Power of the court

26(1) In order to effect a distribution pursuant to this Part, the court may hear an application respecting family property notwithstanding that the spouse who made the application has no legal or equitable interest in the family property.

(2) In order to effect a distribution pursuant to this Part, the court may make any order that it considers fit in the circumstances whether or not it affects title to family property.

(3) Without limiting the generality of subsection (2), the court may do any of the following:

- (a) order a spouse to pay money in a lump sum or over a specified period, with or without interest, or vest an interest in any family property in the other spouse;
- (b) order a spouse to pay to the other spouse a sum equivalent to the value of the other spouse's interest in any family property as determined by the court;
- (c) order that the family property or any part of the property be sold and that the proceeds be distributed between the spouses as the court directs;
- (d) prescribe the terms and conditions of a sale ordered pursuant to this section;
- (e) order the partition or division of family property;
- (f) if family property is owned by spouses as joint tenants, sever the joint tenancy;
- (g) order the vesting of family property in one spouse or in both spouses in common;
- (h) order that a spouse create a trust pursuant to which family property would be held in trust for a spouse pursuant to any terms and conditions that the court thinks fit;
- (i) order the possession of family property by one spouse subject to any terms and conditions that the court thinks fit;

- (j) declare that a spouse has no rights pursuant to *The Homesteads Act, 1989* with respect to all or any family property of the other spouse or that is transferred to the other spouse;
- (k) declare that a spouse has an interest in family property notwithstanding that the spouse in whose favour the order is made had no prior legal or equitable interest in the family property;
- (l) direct the Registrar of Titles to, or authorize any person to submit an application to:
 - (i) register, discharge, amend or assign an interest, including an interest postponing an interest with respect to priority; or
 - (ii) transfer title or make changes to a title;
- (m) order a spouse, or any other person, to vacate any family property, and provide for the enforcement of the order;
- (n) order a spouse to give security, on any terms and conditions that the court thinks fit, for the performance of any obligation imposed by an order made pursuant to this section, including a charge on property, and provide for the enforcement of that charge by sale or otherwise as necessary;
- (o) require a spouse, as a condition of an order, to surrender all present claims to family property in the name of the other spouse;
- (p) vary, amend or discharge an order previously made pursuant to this Part or pursuant to *The Matrimonial Property Act* or *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:
 - (i) subject to subsection (4), the spouses are still spouses within the meaning of this Act;
 - (i.1) if the spouses are spouses within the meaning of clause (c) of the definition of “**spouse**” in subsection 2(1), the time period mentioned in section 3.1 has not expired; and
 - (ii) there has been a substantial change in the circumstances warranting the variation, amendment or discharge;
- (q) order a distribution of family property in accordance with a settlement of, or an agreement respecting, an application for a family property order made or continued by a surviving spouse or continued by a personal representative;
- (r) make an order with respect to any matter or give any direction that, in the opinion of the court, is necessary.

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(4) Whether or not the spouses to whom the order applied are still spouses, an application for an order pursuant to clause (3)(p) may be made, with leave of the court, by a person or the personal representative of a person:

- (a) who is named in an order pursuant to clause (3)(h), (i) or (n);
- (b) who is named in 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
- (c) against whose estate or interest an order mentioned in clause (a) or (b) is made.

(5) 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 payable pursuant to this Act, a sum no larger than the value of the benefit the spouse has with respect to the assets of the corporation.

1997, c.M-6.11, s.26; 2000, c.70, s.18; 2001, c.51, s.8 and 11.

Disclosure of property by spouses

27(1) Where an application is commenced pursuant to 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 of the spouse's family property, whether it is situated in Saskatchewan or elsewhere;
- (b) any family property disposed of by the spouse within two years before the commencement of the application; and
- (c) all of the spouse's debts and liabilities.

(2) A statement made pursuant to subsection (1) must 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 made pursuant to subsection (1) would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination on it before the hearing be treated as confidential and not form part of the public record.

1997, c.M-6.11, s.27; 2001, c.51, s.11.

PART V
Dissipation, Transfer or Gift of Family Property

Return of gift of property when insufficient consideration

28(1) Where an application has been made for a family property order, the court has the powers conferred by subsection (2) where it is satisfied that:

- (a) a spouse has, before or after the coming into force of this Act or *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001 (No. 2)*:
 - (i) dissipated family property in whole or in part;
 - (ii) transferred family property to a third person for less than adequate consideration with the intention of defeating a claim that the other spouse may have pursuant to this Act or *The Matrimonial Property Act*; or
 - (iii) without the consent of the other spouse, made a substantial gift of family 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 family property order.
- (2) For the purposes of subsection (1), the court may do any of the following:
- (a) when the court makes a family property order, consider the family property dissipated, transferred or gifted to be part of the share of the spouse who dissipated, transferred or gifted the property;
 - (b) subject to any terms and conditions that the court thinks fit, order the donee or, subject to subsection (3), the transferee to pay or transfer all or part of the family property to a spouse;
 - (c) give judgment in favour of a spouse against the donee or, subject to subsection (3), the transferee for a sum not exceeding the amount by which the share of that spouse pursuant to the family property order is reduced as a result of the transfer or gift.
- (3) Where subclause (1)(a)(ii) applies, the court may make an order pursuant to clause (2)(b) or (c) only if the court is satisfied that the transferee accepted the family property transferred when the transferee knew or ought to have known that the transfer was made with the intention of defeating a claim a spouse may have pursuant to this Act.
- (4) The court may, notwithstanding the definition of value in section 2, consider the value of the family 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.

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(5) Where a spouse applies for an order pursuant to clause (2)(b) or (c), the applicant shall serve the transferee or donee with a notice of the application, and the notice must include all allegations made and the nature of the claim of the applicant as it affects the transferee or donee.

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

1997, c.M-6.11, s.28; 2001, c.51, s.8 and 11.

Prevention of gift or sale

29(1) The court has the powers conferred by subsection (2) where the court is satisfied that a spouse:

- (a) is about to commit an act amounting to dissipation, and that action may defeat a claim of the other spouse pursuant to this Act;
 - (b) is about to abscond with any family property, and that action may defeat a claim of the other spouse pursuant to this Act;
 - (c) intends to transfer family property to a person for less than adequate consideration, and that action may defeat a claim of the other spouse pursuant to this Act; or
 - (d) intends to make a substantial gift of family property, and that action may defeat a claim of the other spouse pursuant to this Act.
- (2) For the purposes of subsection (1), the court may do any of the following:
- (a) make an order restraining the making of the transfer or gift or the absconding with the property;
 - (b) 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.
- (3) An application for an order pursuant to subsection (2) may be made as an application in proceedings commenced pursuant to this Act, by notice of motion or in any other manner that may be prescribed in the rules of court.
- (4) An application for an order pursuant to subsection (2) may be made *ex parte* and, where an application is made *ex parte*, the court may:
- (a) dispense with service of the notice of the application; or
 - (b) direct that the notice of the application be served at any time and in any manner that the court thinks fit.
- (5) Every person who knowingly and wilfully refuses or neglects to comply with an order made pursuant to subsection (2) is, in addition to any other liability that person may incur, guilty of an offence and liable on summary conviction to a fine of not more than \$1,000.

1997, c.M-6.11, s.29; 2001, c.51, s.11.

PART VI
Application on Death of Spouse

Application by spouse of deceased

30(1) An application for a family 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 family 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) Where the deceased spouse died intestate, no court, in making a distribution of family property pursuant to an application made or continued by a surviving spouse or continued by the personal representative of a deceased spouse, shall consider the amount payable to a spouse pursuant to *The Intestate Succession Act, 1996*, and no order made pursuant to this Act affects the rights of the surviving spouse on intestacy.

1997, c.M-6.11, s.30; 2001, c.51, s.11.

Where estate is involved

31 Where an application is continued or commenced pursuant to section 30:

(a) this Act applies, with any necessary modification, with respect to the estate of the deceased spouse; and

(b) the property of the deceased spouse, whether or not it has vested in the personal representative, is family property that is subject to this Act.

1997, c.M-6.11, s.31; 2001, c.51, s.11.

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 family property order has been determined.

1997, c.M-6.11, s.32; 2001, c.51, s.11.

Consent to distribution of estate

33(1) Until the expiration of six months from the grant of probate 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:

(a) the consent of the surviving spouse; or

(b) 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) The personal representative is personally liable to the surviving spouse for any loss suffered by the surviving spouse as a result of a distribution where:

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

1997, c.M-6.11, s.33; 2001, c.51, s.11.

Distribution in accordance with court order

34(1) Where an application for a family property order is made or continued by a surviving spouse or is continued by the personal representative of the deceased spouse:

- (a) the personal representative of the deceased spouse shall hold the estate subject to any family property order that may be made; and
- (b) no personal representative shall proceed with the distribution of the estate other than in accordance with and subject to the family property order.

(2) Unless he or she 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 family property order is valid as against a surviving spouse unless it is confirmed by an order of the court.

1997, c.M-6.11, s.34; 2001, c.51, s.11.

Property deemed never part of estate

35 Money paid or property transferred to a surviving spouse pursuant to a family 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 pursuant to *The Intestate Succession Act, 1996*;
- (c) by a dependant pursuant to *The Dependants' Relief Act, 1996*;
- (d) by a claimant in an action pursuant to *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 family property order.

1997, c.M-6.11, s.35; 2001, c.51, s.11.

Personal rights only conferred

36 Notwithstanding any other Act or law, but subject to sections 8, 10 and 11 and subsections 26(4) and 30(1), the rights conferred on a person pursuant to this Act do not survive the death of that person for the benefit of that person's estate.

1997, c.M-6.11, s.36.

Effect on *Dependants' Relief Act, 1996*

37(1) Nothing in this Act affects the right of a surviving spouse to make an application pursuant to *The Dependants' Relief Act, 1996*.

(2) An application by a surviving spouse pursuant to *The Dependants' Relief Act, 1996* may be joined with an application pursuant to this Part.

1997, c.M-6.11, s.37.

PART VII Interspousal Contracts

Interspousal contracts

38(1) The terms of an interspousal contract mentioned in subsection (4) are, subject to section 24, binding between spouses, whether or not there is valuable consideration for the contract, where the spouses have entered into an interspousal contract:

- (a) that deals with the possession, status, ownership, disposition or distribution of family property, including future family 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, that he or she:
 - (i) is aware of the nature and the effect of the contract;
 - (ii) is aware of the possible future claims to property he or she may have pursuant to this Act; and
 - (iii) intends to give up those claims to the extent necessary to give effect to the contract.
- (2) A spouse shall make the acknowledgment mentioned in subsection (1) before a lawyer other than the lawyer:
- (a) acting in the matter for the other spouse; or
 - (b) 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 family property between the spouses at any time, including, but not limited to, the time of:
 - (i) separation of the spouses;
 - (ii) dissolution of the marriage; or
 - (iii) a declaration of nullity of marriage;

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- (b) apply to family 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 commencing to cohabit in a spousal relationship, but is unenforceable until after they commence cohabitation.
- (5) 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*, there may be no division between the parties of unadjusted pensionable earnings pursuant to that Act.
- (6) Where an interspousal contract has been entered into pursuant to 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.

1997, c.M-6.11, s.38; 2001, c.51, s.8 and 11.

39 Repealed. 2001, c.51, s.8.

Agreements between spouses

40 The court may, in any proceeding pursuant to 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.

1997, c.M-6.11, s.40.

Agreements made before Act comes into force

41(1) Any written agreement made between spouses before the coming into force of *The Matrimonial Property Act* or *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001 (No. 2)* shall, in any proceeding pursuant to 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 family property as between spouses before the coming into force of *The Matrimonial Property Act* or *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001 (No. 2)*.

(2) Where persons who are spouses within the meaning of clause (c) of the definition of ‘**spouse**’ in subsection 2(1) enter into a written agreement before the coming into force of *The Miscellaneous Statutes (Domestic Relations) Amendment Act, 2001 (No. 2)*, the agreement is deemed to be an interspousal contract if:

- (a) each spouse obtained independent legal advice before signing the agreement; or
- (b) the agreement meets the requirements set out in subsections 38(1) and (2).

2001, c.51, s.8.

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 family property in accordance with the terms and conditions of the interspousal contract.

1997, c.M-6.11, s.42; 2001, c.51, s.11.

**PART VIII
General****Property remains separate**

43(1) No provision of this Act vests any title to or interest in any family property of one spouse in the other spouse.

(2) Subject to subsection 18(2) and sections 28 and 50, any interspousal contract and any order of a court made pursuant to this Act, the spouse who owns the family property may 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.

1997, c.M-6.11, s.43; 2001, c.51, s.11.

Applications

44(1) Where, in an application pursuant to 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 pursuant to this Act, no person who is a party to the proceeding shall make an application pursuant to this Act to any other court.

(3) Where an application is made to a court pursuant to this Act, the court may order that the proceeding 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.

(4) An application pursuant to this Act shall be made in the manner prescribed in the rules of court.

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

1997, c.M-6.11, s.44; 2001, c.51, s.11.

c. F-6.3**FAMILY PROPERTY****Obligations of lawyer**

44.1(1) It is the duty of every lawyer who undertakes to act on behalf of a spouse in an application pursuant to this Act to:

- (a) discuss with the spouse the advisability of using alternative methods to resolve the matters that are the subject of the application; and
 - (b) inform the spouse of the collaborative law services and mediation services known to him or her that might be able to assist the spouses in resolving those matters.
- (2) Every application presented to the court by a lawyer pursuant to this Act is to contain a statement signed by the lawyer certifying that he or she has complied with subsection (1).

2012, c.24, s.4.

Third party interests

45 Where an order is sought pursuant to this Act respecting family 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.

1997, c.M-6.11, s.45; 2001, c.51, s.11.

Minor

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

1997, c.M-6.11, s.46.

Public may be excluded

47 In any proceeding pursuant to this Act, where, in the opinion of the court or the Court of Appeal for Saskatchewan, the desirability of protecting against the consequences of possible disclosure of financial or personal matters outweighs the desirability of holding a hearing in public, the court or the Court of Appeal may:

- (a) exclude the public from the hearing, or any part of it; and
- (b) by order prohibit the publication of any matter connected with the application or given in evidence at the hearing.

1997, c.M-6.11, s.47.

Public Trustee may be made party to proceedings

48(1) Where the public guardian and trustee considers it necessary, the public guardian and trustee may, in accordance with the rules of court, apply to the court to be joined as a party to any proceedings pursuant to this Act.

(2) At any time during a proceeding pursuant to this Act, the court may, where it thinks fit and regardless of whether an application is made by the public guardian and trustee, direct the public guardian and trustee to be joined as a party to the proceeding.

(3) Notice of an application pursuant to this Act shall be served on the public guardian and trustee by ordinary mail where:

(a) an application pursuant to this Act is continued or commenced by a surviving spouse or continued by a personal representative; and

(b) there is a child, other than a child within the meaning of clause (b) in the definition of child in subsection 2(1), who has or may have an interest in the estate of the deceased spouse.

1997, c.M-6.11, s.48; 2001, c.34, s.2.

Filing certificate of *lis pendens*

49 Sections 46 and 47 of *The Queen's Bench Act, 1998* apply, with any necessary modification, with respect to any application or proceeding pursuant to this Act in which any title to land is brought into question.

1997, c.M-6.11, s.49; 1998, c.48, s.8.

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 spouses who are legally married is 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 the spouses 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 proof, in the absence of evidence to the contrary, that each spouse is intended to have, on a severance of the joint ownership or tenancy, a one-half beneficial interest in the property; and

(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 or section 50 of *The Matrimonial Property Act*.

1997, c.M-6.11, s.50; 2001, c.51, s.8.

Rights of new spouse

51 Where a person becomes the spouse of a person who has a spouse, the rights pursuant to this Act of the subsequent spouse are subject to the rights pursuant to this Act of the prior spouse.

2001, c.51, s.8.

Rights additional

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

1997, c.M-6.11, s.52.

Notice

53(1) Any notice required to be given pursuant to section 10 or 15 is to be served personally or by registered mail addressed to the person to whom notice is to be given at that person's usual last known address.

(2) Where notice is served by registered mail in accordance with subsection (1), service is deemed to have been made on the fifth day after the day of mailing.

1997, c.M-6.11, s.53.

Service *ex juris*

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

1997, c.M-6.11, s.54.

Appeal

55 An appeal lies to the Court of Appeal for Saskatchewan from any order or judgment made or given on or pursuant to an application pursuant to this Act.

1997, c.M-6.11, s.55.

Costs

56 The court may make any order as to costs of and consequent on an application pursuant to this Act that the court thinks fit.

1997, c.M-6.11, s.56.

Assessor

57(1) The court may, where the court 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 of the remuneration by any of the parties.

1997, c.M-6.11, s.57.

Rules

58(1) The judges of the court, or a majority of them, may make rules on practice and procedure for the purpose of giving effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), the judges may make rules:

(a) as to the practice and procedure to be followed and the forms to be used pursuant to this Act;

(b) prescribing the time within which documents are to be filed and served pursuant to this Act;

(c) prescribing the information to be contained in a statement made pursuant to section 27;

(d) governing the deposit or payment into or transfer out of court of any money or property, or the dealing with that money or property.

1997, c.M-6.11, 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 pursuant to this section has the force of law.

1997, c.M-6.11, s.59.

PART IX**Repeal and Coming into Force****S.S. 1979, c.M-6.1 repealed**

60 *The Matrimonial Property Act* is repealed.

1997, c.M-6.11, s.60.

