

# Publisher's Note

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## McLeod & Mamo Matrimonial Property Law In Canada

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

### What's New in this Update:

This release features updates to the case law and commentary to **Part I: Matrimonial Property in the Common Law** under headings: (1) *Recent Legislation and the Continued Relevance of Common Law and Equitable Remedies*, (3) *Constitutional Problems*, (4) *The Order of Proceedings*, and (6) *Fraudulent Conveyances*.

### Highlights

Legislative competence over family law is divided between Parliament and the provincial Legislatures under the *Constitution Act, 1867*. Parliament has legislative authority over Marriage and Divorce while the provincial Legislatures have legislative authority over Solemnization of Marriage Within the Province as well as over Property and Civil Rights within the province. After some initial uncertainty, it was held that Parliament had exclusive legislative authority over divorce and essential validity of marriage while the province had exclusive legislative authority over formal validity of

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marriage and primary legislative authority over, *inter alia*, support and matrimonial property. Although Parliament successfully asserted ancillary legislative authority over support following divorce, it made no attempt to assert similar legislative authority over matrimonial property

More recently, appellate courts have relied on fraudulent conveyances legislation to set aside transfers to third parties by spouses where the transfers were undertaken to defeat their spouse's claims. For example, in *Shoukralla v. Dumolong*, 2016 ONCA 128, 2016 CarswellOnt 17387 (Ont. C.A.), notwithstanding a court order prohibiting the husband from selling properties without a further court order, he transferred a property to tenants. The Ontario Court of Appeal held that the transfer constituted a fraudulent conveyance pursuant to the *Fraudulent Conveyances Act* where the purchasers were not at arm's length from the husband, they had knowledge of the court order prohibiting sale of the property, the husband had transferred the property with the intent to defeat the wife's claims, and the purchasers did not rebut the evidentiary presumption that they were privy to this intent.