

TABLE OF CONTENTS

| | |
|--|-------|
| Preface | iii |
| Table of Cases | xxiii |
| Introduction | |
| Section 1 — Definitions | 1 |
| 1§1 Section Overview | 2 |
| 1§2 “Birth” (s. 1(b))..... | 2 |
| 1§3 “Birth mother” (s. 1(b.1))..... | 3 |
| 1§4 “Child” (s. 1(c)) | 3 |
| 1§5 “Conjugal” (s. 1(c.1))..... | 3 |
| 1§6 “Court” (s. 1(e))..... | 3 |
| 1§7 “Father” (s. 1(f))..... | 3 |
| 1§8 “Grandparent” (s. 1(g)) | 4 |
| 1§9 “Marriage” (s. 1(g.1)) | 4 |
| 1§10 “Mother” | 4 |
| 1§11 “Parent” (s. 1(j))..... | 4 |
| 1§12 “Person Standing in the Place of a Parent” (s. 1(m))..... | 7 |
| 1§13 “Relationship of Interdependence” (s. 1(n))..... | 8 |
| 1§13.1 Adult Interdependence — Burden of Proof..... | 10 |
| 1§13.2 Elements of Interdependence — The “ <i>Molodowich</i> Factors”..... | 10 |
| 1§13.3 “Relationship of Interdependence” — Shared Lives/ Emotional Commitment (<i>AIRA</i> , s. 1(1)(f)(i)-(ii)) | 11 |
| 1§13.4 “Relationship of Interdependence” — “Economic and Domestic Unit” (<i>AIRA</i> , s. 1(1)(f)(iii)) | 12 |
| 1§13.4(a) “Conjugal Relationship” (<i>AIRA</i> , s. 1(2)(a))..... | 12 |
| 1§13.4(b) “Degree of Exclusivity” (<i>AIRA</i> , s. 1(2)(b))..... | 13 |
| 1§13.4(c) “Household Activities and Living Arrangements” (<i>AIRA</i> , s. 1(2)(c))..... | 13 |
| 1§13.4(d) Functioning as an “Economic and Domestic Unit” (<i>AIRA</i> , s. 1(2)(d))..... | 14 |
| 1§13.4(e) “Formalizing Obligations, Intentions and Responsibilities” (<i>AIRA</i> , s. 1(2)(e)) | 15 |
| 1§13.4(f) Contributions to “Mutual Well-being” (<i>AIRA</i> , s. 1(2)(f))..... | 16 |
| 1§13.4(g) “Financial Dependence or Interdependence” (<i>AIRA</i> , s. 1(2)(g)) | 16 |
| 1§13.4(h) “Ownership, Use and Acquisition of Property” (<i>AIRA</i> , s. 1(2)(i)) | 16 |

Table of Contents

| | |
|--|----|
| 1§13.5 Elements of Interdependence — Other Cases | 16 |
| Section 2 — Crown is Bound | 19 |
| 2§1 Exceptions to the Rule | 19 |
| Section 3 — Court Jurisdiction | 19 |
| 3§1 General | 19 |
| 3§2 Restrictions to the Jurisdiction of the Provincial Court | 19 |
| 3§2.1 Jurisdictional Conflicts | 20 |
| 3§3 <i>Parens Patriae</i> | 21 |
| Section 4 — Concurrent Proceedings | 22 |
| 4§1 General | 23 |
| 4§2 Court Jurisdiction | 23 |
| Section 5 — Duty of Lawyer | 25 |
| 5§1 Tools for Settlement | 25 |
| 5§2 Cross-reference | 25 |
| Part 1 — Establishing Parentage | |
| Part 1§1 General | 25 |
| Section 5.1 — Interpretation | 25 |
| 5.1§1 General | 26 |
| 5.1§2 Definition | 26 |
| Section 6 — Application of Part | 27 |
| 6§1 Introduction | 27 |
| 6§2 <i>The Child, Youth and Family Enhancement Act</i> | 27 |
| Section 7 — Rules of Parentage | 28 |
| 7§1 General | 28 |
| Section 8 — Presumption of Parentage — Biological Father | 29 |
| 8§1 General | 30 |
| 8§2 Presumption of Parenthood — Right to Rebut Presumption | 30 |
| 8§3 Presumption — Registration as a Father under the <i>Vital Statistics Act</i> | 31 |
| Section 8.1 — Assisted Reproduction | 31 |
| 8.1§1 Parents — Who and How Many | 33 |
| 8.1§2 Same-sex Relationships | 34 |
| Section 8.2 — Surrogacy | 35 |
| 8.2§1 Surrogacy — Who May Apply for a Parental Declaration | 37 |
| 8.2§2 Regulations | 37 |
| 8.2§3 Parenting Issues Arising in Assisted Conception Cases — Pre-2011 Amendments | 38 |
| Section 9 — Declaration Respecting Parentage | 39 |
| 9§1 General | 40 |
| 9§2 History | 40 |
| 9§3 Definitions | 40 |
| 9§4 What is a Parent? | 41 |

Table of Contents

| | | |
|---|---|-----|
| 9§5 | Registration under the <i>Vital Statistics Act</i> | 42 |
| 9§6 | Effect of Declaration of Parentage | 43 |
| Section 10 — New Evidence | | 43 |
| 10§1 | History | 43 |
| 10§2 | New Evidence Permitted..... | 44 |
| 10§3 | Re-opening the Case..... | 44 |
| Section 11 — Notice of Application | | 45 |
| 11§1 | History | 45 |
| 11§2 | Service..... | 45 |
| Section 12 — [Repealed] | | 46 |
| 12§1 | Repeal..... | 46 |
| Section 13 — [Repealed] | | 46 |
| 13§1 | Repeal..... | 46 |
| Section 14 — Evidence Not Admissible | | 46 |
| 14§1 | History | 46 |
| Section 15 — Blood Tests, etc. | | 46 |
| 15§1 | General | 47 |
| 15§2 | Factors in Granting Permission to Obtain DNA Testing | 47 |
| 15§3 | Inference Resulting from Refusal to Consent to Testing (s. 15(5)) | 49 |
| 15§4 | Cost of Testing | 51 |
| Part 2 — Guardianship, Parenting and Contact Orders and Enforcement of Time with a Child | | |
| Section 16 — Definitions | | 51 |
| 16§1 | History | 52 |
| 16§2 | “Place of Residence” (s. 16(b)) — Cross-reference | 52 |
| Section 17 — Notice of Application | | 53 |
| 17§1 | Service on the Child..... | 54 |
| 17§2 | Procedure | 54 |
| Section 18 — Best Interests of the Child | | 54 |
| 18§1 | General | 56 |
| 18§2 | Considering the Best Interests of the Child (s. 18(1))..... | 56 |
| 18§3 | Considering a Child’s “Views and Preferences” (s. 18(2)(b)(iv))..... | 76 |
| 18§4 | Relocation Cases — Maintaining Meaningful Relationships with Each Guardian (s. 18(2)(b)(ix)) | 79 |
| 18§4.1 | Relocation — Looking at the Motive for a Move..... | 92 |
| 18§4.2 | Relocation — Sole Guardian Seeking Leave to Move..... | 95 |
| 18§4.3 | Relocation — Family Violence (s. 18(2)(b)(vi)) | 97 |
| 18§4.4 | Relocation — Child’s Level of Involvement with Non- custodial Parent..... | 97 |
| 18§4.5 | Relocation — Forcing the Issue..... | 100 |

Table of Contents

| | | |
|--------|--|-----|
| 18§5 | Ability and Willingness to Care for and Meet Child’s Needs (s. 18(2)(b)(viii)(A)) | 101 |
| 18§5.1 | Guardianship to Non-parents | 106 |
| 18§6 | Communication and Cooperation (s. 18(2)(b)(viii)(B)) | 117 |
| 18§7 | Maintaining Meaningful Relationships (s. 18(2)(b)(ix)) | 129 |
| 18§7.1 | Maintaining Meaningful Relationships — Police Enforcement | 136 |
| 18§7.2 | Maintaining <i>in Loco Parentis</i> Relationships | 137 |
| 18§8 | Taking Jurisdiction | 138 |
| 18§9 | Family Violence Issues (s. 18(2) and (3)) | 141 |
| 18§10 | Importance of Expert Opinion | 149 |
| 18§11 | Applying <i>Miglin</i> Principles in Overriding a Negotiated Agreement | 150 |

DIVISION 1 — GUARDIANSHIP

| | |
|---|-----|
| Section 19 — Children Subject to Guardianship | 151 |
| 19§1 Amendments to this Section | 151 |
| Section 20 — Guardians of Child | 152 |
| 20§1 History | 153 |
| 20§2 General | 154 |
| 20§3 Defined Terms (s. 20)..... | 154 |
| 20§4 Demonstrated Intention | 157 |
| 20§5 Denial of Guardianship Notwithstanding Demonstrated Intention ... | 162 |
| 20§6 Failure to Communicate | 163 |
| 20§7 Natural Parents as Potential Guardians | 164 |
| 20§8 Application for Guardianship under s. 23 | 165 |
| Section 21 — Powers, Responsibilities and Entitlements of Guardianship | 165 |
| 21§1 Guardian Responsibilities (s. 21(5)) | 167 |
| 21§2 Presumption of Equality..... | 168 |
| 21§3 No Intrusion on the Rights of Guardian..... | 169 |
| 21§4 Non-parent Guardian Support | 172 |
| Section 22 — Testamentary Appointment of Guardian | 172 |
| 22§1 Testamentary Appointment..... | 173 |
| Section 23 — Guardianship Order | 173 |
| 23§1 Place of Residence — Court Jurisdiction | 175 |
| 23§2 Standing to Apply (s. 23(1))..... | 176 |
| 23§3 Reports by Qualified Persons (s. 23(3))..... | 179 |
| 23§4 Factors Considered in Guardianship Applications | 179 |
| 23§4.1 Conflict between Parties | 187 |
| 23§5 Applicants’ Residency Requirement (s. 23(4))..... | 188 |
| 23§6 Jurisdictional Conflict | 189 |

Table of Contents

| | |
|--|-----|
| Section 24 — Consent to Guardianship | 196 |
| 24§1 Dispensing with Consent (s. 24(2))..... | 196 |
| Section 25 — Termination of Guardianship | 197 |
| 25§1 Application of s. 25..... | 198 |
| 25§2 No Testamentary Termination..... | 203 |
| Section 26 — Duration of Guardianship | 204 |
| 26§1 Termination of Guardianship (s. 26(d))..... | 204 |
| Sections 27-29 — [Repealed] | 204 |
| 29§1 Sections 27-29..... | 204 |
| Section 30 — Review of Guardian’s Decision | 204 |
| 30§1 Powers of Review..... | 205 |
| Section 31 — Referral of Questions to Court | 205 |
| 31§1 General..... | 205 |
| | |
| DIVISION 2 — PARENTING ORDERS | |
| Section 32 — Parenting Order | 205 |
| 32§1 General..... | 206 |
| 32§2 Applications of s. 32..... | 206 |
| Section 33 — Terms and Conditions | 214 |
| 33§1 Terms, Conditions and Restrictions..... | 214 |
| Section 34 — Variation of Parenting Order | 215 |
| 34§1 General..... | 215 |
| 34§2 Change in Needs or Circumstances (s. 34(3))..... | 216 |
| 34§2.1 Changes in Children’s Wishes..... | 216 |
| 34§2.2 Change in Financial Need..... | 216 |
| 34§2.3 Age-related Needs of a Child..... | 216 |
| 34§2.4 Thwarting Access/Parental Alienation..... | 219 |
| 34§2.5 Change in Lifestyle..... | 224 |
| 34§2.6 Variation to Allow Relocation..... | 227 |
| 34§3 No Change in Circumstances..... | 235 |
| 34§4 Varying an Interim Parenting Order..... | 242 |
| 34§5 No Back-door Appeals..... | 242 |
| | |
| DIVISION 3 — CONTACT ORDERS | |
| Section 35 — Contact Order | 243 |
| 35§1 General..... | 244 |
| 35§2 Criteria for Contact Orders (s. 35(5))..... | 244 |
| 35§2.1 Best Interests of the Child (s. 35(5)(a))..... | 245 |
| 35§2.2 Child’s Health May Be Jeopardized without Contact (s. 35(5)(b))..... | 246 |
| 35§3 Contact With Non-parents..... | 247 |
| 35§4 Permission to Apply (s. 35(2))..... | 254 |

Table of Contents

35§4.1 Permission to Apply — Grandparents (s. 35(3))..... 254

35§4.2 Permission to Apply — Grandparents — Interruption
of Contact (s. 35(3))..... 254

35§4.3 Considerations in Granting Permission to Apply —
“Significance of the Relationship” (s. 35(4)(a))..... 257

35§4.4 Considerations in Granting Permission to Apply —
“Necessity of Making an Order to Facilitate
Contact” (s. 35(4)(b)) 259

35§5 Denial of Contact — Non-parent — Blameworthy Conduct 260

Section 36 — Terms and Conditions 262

36§1 Examples of Terms and Conditions..... 262

36§1.1 Structured Contact..... 264

36§1.2 Supervised Contact..... 265

36§1.3 Acrimony between Parties..... 266

36§1.4 Restrictions Relating to Religion..... 267

36§1.5 Child Health Concerns..... 268

Section 37 — Variation of Contact Order 268

37§1 Criteria for a Variation Order (s. 37(3))..... 268

37§1.1 Change in Needs or Circumstances (s. 37(3))..... 269

DIVISION 4 — ENFORCEMENT OF TIME WITH A CHILD

Section 38 — Interpretation..... 271

38§1 General 272

Section 39 — Other Rights Not Affected 273

39§1 History 273

Section 40 — Enforcement Order 273

40§1 History 274

40§2 Compensatory Time (s. 40(2)(a)) 274

40§3 Compensation for Expenses Incurred (s. 40(2)(c)) 275

40§4 Warrant for Committal (s. 40(2)(e)) 275

40§5 Order Directing Parties to Do “Anything the Court Considers
Appropriate” to Induce Compliance (s. 40(2)(g) and (6)(c))..... 275

40§6 Excusable Denial of Time with a Child (s. 40(5)) 276

40§7 Other Applications of the Enforcement Provisions..... 276

Section 41 — Failure to Exercise Time 276

41§1 Examples of Failures to Exercise Time..... 276

Section 42 — Variation of Enforcement Order..... 277

42§1 History..... 277

Section 43 — Reasons Must Be Given..... 277

43§1 History..... 277

Section 44 — Assistance of Enforcement Officer 277

44§1 Assistance of Enforcement Officer (s. 44(1)) — General..... 278

Table of Contents

| | |
|---|-----|
| Section 45 — Report by Enforcement Officer | 279 |
| 45§1 History | 279 |
| DIVISION 5 — EFFECT OF DIVORCE PROCEEDINGS | |
| Section 45.1 — Effect of Divorce Proceedings | 280 |
| 45§1.1 Effect of Divorce Proceedings | 280 |
| Part 3 — Support Obligations | |
| Section 46 — Definitions | 280 |
| 46§1 Definition of “Adult Interdependent Partner” (s. 46(a))..... | 281 |
| 46§2 Definition of “Child” (s. 46(b))..... | 285 |
| 46§3 Rights of the Children of Married vs. Unmarried Parties | 289 |
| 46§4 Support for Disabled Adult Children | 291 |
| 46§5 Priority of Child Support Over Spousal Support..... | 293 |
| 46§6 Retroactive Claims | 293 |
| 46§6.1 Retroactive Spousal Support..... | 293 |
| 46§6.2 Retroactive Child Support | 294 |
| DIVISION 1 — SUPPORT OF CHILD | |
| Section 47 — Definition | 294 |
| 47§1 Definition of “Parent” | 294 |
| Section 48 — Standing in the Place of a Parent | 295 |
| 48§1 General | 296 |
| 48§2 Standing in the Place of a Parent/ <i>in Loco Parentis</i> at Common Law | 296 |
| 48§3 Statutory Definition of “Standing in the Place of a Parent” | 297 |
| 48§4 “Relationship of Interdependence” (s. 48(1)(a)) | 306 |
| 48§5 Demonstrating a “Settled Intention” (s. 48(1)(b))..... | 306 |
| 48§6 Section 48(2) Factors Applied — Standing in the Place of a Parent — Contextual and Holistic Approach..... | 310 |
| Section 49 — Obligation to Support Child | 311 |
| 49§1 Every Parent Has an Obligation to Provide Support (s. 49(1)) | 311 |
| 49§2 Child’s Voluntary Withdrawal Ending the Right to Support (s. 49(2)(b)) | 316 |
| 49§3 Restrictions to the Child Support Obligation | 317 |
| 49§3.1 Adult Children | 317 |
| 49§3.2 Age “Cut Off” for Child Support | 318 |
| 49§3.3 Physically Disabled Children..... | 318 |
| 49§3.4 Legal Strangers | 319 |
| 49§3.5 No Jurisdiction..... | 319 |
| 49§4 Child’s Obligation to Contribute to Support (s. 49(4)) | 320 |
| 49§4.1 Child’s Obligation to Contribute to Support — No Obligation on Minors | 322 |

Table of Contents

| | | |
|-------|--|-----|
| 49§5 | Retroactive Child Support | 322 |
| | 49§5.1 <i>S. (D.B.) v. G. (S.R.)</i> | 323 |
| | 49§5.2 Retroactive Support — Delay in Applying..... | 326 |
| | Section 50 — Child Support Order | 327 |
| 50§1 | Applicants — Definition of “Child” and “Parent” | 328 |
| 50§2 | Applicants — A “Guardian” and a “Person Who Has the Care and Control of the Child”..... | 328 |
| 50§3 | Child Support — Parties Not Living “Separate and Apart” (s. 50(2)(b)(ii))..... | 331 |
| 50§4 | “Care and Control” (s. 50(2)(c))..... | 333 |
| 50§5 | Adding Parties (s. 50(3))..... | 335 |
| | Section 51 — Determining Child Support | 335 |
| 51§1 | The Child Support Guidelines Generally (s. 51(1))..... | 336 |
| | 51§1.1 The Presumptive Rule | 337 |
| 51§2 | Children in Separate Households | 338 |
| 51§3 | Incomes over \$150,000.00 | 339 |
| 51§4 | Wealth Transfer | 341 |
| 51§5 | Person in Place of a Parent | 341 |
| | 51§5.1 <i>Loco Parentis</i> “Top Up” Share of Child Support..... | 341 |
| | 51§5.2 No Discount for Step-parent..... | 342 |
| | 51§5.3 Partial Discount for Step-parent | 344 |
| 51§6 | Medical and Dental Insurance | 345 |
| 51§7 | Special or Extraordinary Expenses (s. 7 Expenses) | 345 |
| 51§8 | Split Care and Control..... | 347 |
| 51§9 | Shared Parenting | 347 |
| 51§10 | Set-offs | 347 |
| 51§11 | Parental Incomes | 349 |
| | 51§11.1 Equal Parental Incomes..... | 349 |
| | 51§11.2 Diverse Parental Incomes | 349 |
| 51§12 | Undue Hardship | 349 |
| | 51§12.1 Undue Hardship — Access Costs | 354 |
| | 51§12.2 Undue Hardship — New Family or Other Support Obligations | 355 |
| 51§13 | Lump Sum or Periodic Payments..... | 356 |
| | 51§13.1 Lump Sum Payment Ordered | 356 |
| | 51§13.2 Lump Sum Payment Not Ordered | 357 |
| 51§14 | Securing Child Support Payments | 357 |
| 51§15 | Information to be Specified in a Support Order..... | 358 |
| 51§16 | Varying a Support Order..... | 358 |
| 51§17 | Determining Annual Income..... | 358 |
| | 51§17.1 Shareholders, Directors and Officers | 362 |
| | 51§17.2 Non-residents..... | 367 |

Table of Contents

| | | |
|-------------------|--|-----|
| 51§17.3 | Obligation to Disclose | 367 |
| 51§17.4 | Notice to Disclose | 367 |
| 51§18 | Pattern of Income | 367 |
| 51§19 | Imputing Income | 372 |
| 51§20 | Agreements between Parties | 378 |
| 51§21 | Child Support Obligations of Parents vs. Step-parents — Some Background | 379 |
| 51§22 | Current Situation | 381 |
| 51§23 | Factors in Determining Support Paid by a Step-parent | 383 |
| Section 52 | — Change in Care and Control | 383 |
| 52§1 | “Care and Control” | 383 |
| 52§2 | History | 384 |
| 52§3 | Oral Agreements for Care | 384 |
| Section 53 | — Child Support Agreement | 384 |
| 53§1 | Child Support Agreements | 384 |
| Section 54 | — Suspension of Child Support Order or Agreement | 388 |
| 54§1 | Effect of s. 54 | 388 |
| Section 55 | — Termination of Child Support Order | 389 |
| 55§1 | Statutorizing the Common Law | 389 |
| 55§2 | No Effect on Arrears (s. 55(2)) | 389 |

DIVISION 1.1 — CHILD SUPPORT RECALCULATION PROGRAM

| | | |
|----------------------|---|-----|
| Section 55.1 | — Definitions | 390 |
| 55.1§1 | Child Support Recalculation Program | 391 |
| Section 55.11 | — Child Support Recalculation Program | 391 |
| 55.11§1 | General | 392 |
| Section 55.12 | — Mandatory Clauses Concerning Recalculation | 393 |
| 55.12§1 | General | 393 |
| Section 55.2 | — Registration | 393 |
| 55.2§1 | Right to Register | 393 |
| Section 55.21 | — Prohibiting Recalculation | 393 |
| Section 55.3 | — Waiver | 394 |
| Section 55.31 | — Recalculated Amount | 394 |
| Section 55.4 | — Right to Object | 394 |
| 55.4§1 | Objections | 395 |
| Section 55.41 | — Income Information | 395 |
| 55.41§1 | General | 395 |
| 55.41§2 | Application of Recalculation Program to Divorce Actions | 396 |
| Section 55.5 | — Contact Information | 396 |
| Section 55.51 | — Recalculation Without Updated Income Information ... | 396 |
| 55.51§1 | Failure to Disclose Income | 398 |
| Section 55.6 | — Protection from Liability | 398 |

Table of Contents

| | |
|--|-----|
| Section 55.61 — Confidentiality | 399 |
| Section 55.7 — Use and Disclosure of Information | 399 |
| 55.7§1 Personal Information..... | 399 |
| Section 55.71 — Service Fee | 399 |
| 55.71§1 Service Fee..... | 399 |
| Section 55.8 — Regulations | 400 |
| 55.8§1 General | 401 |
| DIVISION 2 — SUPPORT OF SPOUSE OR ADULT INTERDEPENDENT PARTNER | |
| Section 56 — Obligation to Support Spouse or Adult Interdependent Partner | |
| Partner | 401 |
| 56§1 Definitions..... | 401 |
| 56§2 General | 401 |
| 56§3 Principles of Spousal Support..... | 402 |
| Section 57 — Spousal or Adult Interdependent Partner Support | |
| Order | 409 |
| 57§1 History..... | 410 |
| 57§2 Interdependent Partner Support..... | 410 |
| 57§3 Support is Discretionary..... | 415 |
| 57§4 Retroactive Partner Support..... | 417 |
| 57§4.1 Blameworthy Conduct and Retroactivity..... | 417 |
| 57§4.2 Interim Support and Retroactivity | 418 |
| Section 58 — Factors | |
| 58§1 General | 419 |
| 58§2 “Conditions, Means, Needs and Other Circumstances” | 422 |
| 58§3 Pre-existing Contracts between Parties (s. 58(a)(iii)) | 425 |
| 58§4 Contributions by Others (s. 58(d))..... | 426 |
| 58§4.1 Support After “Re-partnering” | 427 |
| 58§5 Interaction between Spousal Support and Constructive Trust Claims | 428 |
| 58§6 Applications of ss. 58 and 60..... | 429 |
| 58§6.1 Needs-based Spousal or Partner Support..... | 429 |
| 58§6.1.1 Indefinite Support..... | 429 |
| 58§6.1.2 Short-term and Limited Support..... | 430 |
| 58§6.1.3 Limited Support Exceeds Cohabitation | 439 |
| 58§6.2 Compensatory Support..... | 439 |
| 58§6.3 Elderly Parties | 444 |
| 58§6.4 Lump Sum Awards | 444 |
| 58§6.5 No Support Ordered | 447 |
| 58§7 Interim Applications | 453 |
| Section 59 — Misconduct | |
| | 453 |

Table of Contents

| | | |
|--|---|-----|
| 59§1 | General | 454 |
| Section 60 — Objectives of Spousal or Adult Interdependent Partner Support Order | | |
| 60§1 | General | 457 |
| 60§2 | Economic Advantages and Disadvantages (s. 60(a)) | 458 |
| 60§3 | Apportioning Financial Consequences Arising from Child Care (s. 60(b))..... | 462 |
| 60§4 | Relieving Economic Hardship Arising from Breakdown of Relationship (s. 60(c)) | 465 |
| 60§5 | Promoting Economic Self-sufficiency (s. 60(d)) | 466 |
| 60§6 | Spousal Support Advisory Guidelines | 467 |
| Section 61 — Priority of Child Support | | |
| 61§1 | General | 469 |
| Section 62 — Spousal or Adult Interdependent Partner Support Agreement | | |
| 62§1 | General | 470 |
| 62§2 | Overriding a Support Agreement | 471 |
| Section 63 — Termination of Spousal or Adult Interdependent Partner Support Order | | |
| 63§1 | Termination of Support..... | 472 |
| 63§2 | Cross-reference | 472 |
| DIVISION 3 — GENERAL SUPPORT MATTERS | | |
| Section 64 — Enforcement of Support Agreement | | |
| Section 65 — Disclosure of Financial Information | | |
| 65§1 | Procedure | 474 |
| | 65§1.1 Notice to Disclose..... | 476 |
| 65§2 | Cases — Disclosing Financial Information | 476 |
| 65§3 | Imputing Income (s. 65(3)(c))..... | 477 |
| 65§4 | Failure to Comply with Notice to Disclose | 478 |
| 65§5 | Condition Precedent for Application for Disclosure | 479 |
| Section 66 — Terms and Conditions of Support Order | | |
| 66§1 | General | 481 |
| 66§2 | Indefinite, Time-limited and Lump Sum Spousal Support (s. 66(2), (3)(a)) | 481 |
| 66§3 | Support Held in Trust (s. 66(3)(b)) | 481 |
| 66§4 | Secured Support (s. 66(3)(g)) | 482 |
| 66§5 | Support for Expectant Mother (s. 66(5)) | 482 |
| Section 67 — Definitions | | |
| 67§1 | General | 483 |
| 67§2 | “Household Goods” | 483 |
| 67§3 | “Primary Home”..... | 484 |

Table of Contents

| | |
|--|-----|
| Section 68 — Grant of Exclusive Possession of Home | 484 |
| 68§1 General | 484 |
| 68§2 Occupation Rent | 484 |
| Section 69 — Matters to be Considered | 485 |
| 69§1 General | 485 |
| 69§2 Factors for Consideration | 485 |
| 69§3 Partner Support Ordered in the Course of an Application for Exclusive Possession | 486 |
| 69§4 Defence to Application for Exclusive Possession — Previous Agreement..... | 487 |
| Section 70 — Precedence of Order | 487 |
| 70§1 General | 487 |
| Section 71 — Registration of Order for Possession | 488 |
| 71§1 General | 488 |
| Section 72 — Spouse as Tenant | 488 |
| 72§1 General | 489 |
| Section 73 — Exclusive Use of Household Goods | 489 |
| 73§1 General | 489 |
| Section 74 — Registration of Financing Statement Re Household Goods | 489 |
| 74§1 General | 489 |
| Section 75 — Effect of Registration | 489 |
| 75§1 General | 490 |
| Section 76 — Cancellation of Registration of Order | 490 |
| 76§1 General | 490 |
| Section 77 — Variation of Support Order | 490 |
| 77§1 General | 492 |
| 77§2 Child Support Variation..... | 492 |
| 77§3 Retroactive Child Support Variation..... | 492 |
| 77§4 Spousal/Partner Support Variation..... | 498 |
| 77§5 Retroactive Spousal Support Variation | 498 |
| 77§6 “Change in Circumstances” | 499 |
| 77§7 Variation Orders and the Guidelines..... | 503 |
| 77§8 Limitation on Varying a Time-limited Spousal Support Order | 504 |
| Section 78 — Competent and Compellable Witness | 505 |
| Section 79 — Applications May Not Be Combined | 505 |
| Section 80 — Support Order Binds Estate | 506 |
| 80§1 Support Agreement Binds Estate (s. 80(1)) | 506 |
| Section 80.1 — Variation of Support Obligation Where Payor Deceased | 507 |
| Section 81 — Effect of Divorce Proceedings | 508 |
| Section 82 — Application for Reimbursement of Burial Expenses | 508 |

Table of Contents

| | | |
|--|---|-----|
| 82§1 | General | 509 |
| Part 3.1 — Canada Pension Plan (Canada) | | |
| Section 82.1 | | 509 |
| 82.1§1 | General | 509 |
| Section 82.2 | | 510 |
| 82.2§1 | General | 510 |
| Part 4 — General Powers of Court | | |
| Section 83 — Declaration of Irreconcilability | | 512 |
| 83§1 | General | 512 |
| 83§2 | Declaration of Irreconcilability | 512 |
| Section 84 — Interim Order | | 513 |
| 84§1 | Interim Support — Practice and Procedure | 513 |
| 84§2 | Varying an Interim Order..... | 514 |
| Section 85 — Consent Order or Declaration | | 516 |
| 85§1 | Court Discretion in Considering Consent Orders | 516 |
| 85§2 | Settlement Terms in Best Interests of Child | 517 |
| Section 86 — Incorporation of Terms of Agreement in Court Order ... 517 | | |
| 86 | Cross-reference | 518 |
| Section 87 — Evidence Admissible | | 518 |
| 87§1 | Burden of Proof..... | 518 |
| 87§2 | Relevance of Materials | 518 |
| 87§3 | Privilege of Counselling Records..... | 520 |
| 87§4 | Introduction of New Evidence | 521 |
| 87§5 | Evidence from a Child..... | 522 |
| Section 88 — Failure to Appear | | 523 |
| 88§1 | General | 523 |
| Section 89 — Appeal | | 524 |
| 89§1 | Appeal | 524 |
| 89§2 | Test for Appeal..... | 524 |
| Section 90 — Order or Declaration under Appeal Remains in Force ... 528 | | |
| Section 91 — Frivolous or Vexatious Applications | | 528 |
| 91§1 | General | 528 |
| 91§2 | Definitions..... | 528 |
| 91§3 | Interfering and Abusive Parties..... | 530 |
| 91§4 | Balancing Rights of Litigants with the Court’s Functions..... | 538 |
| Section 92 — Stay of Proceedings and Judgments | | 541 |
| 92§1 | Stay Pending Appeal Granted..... | 542 |
| 92§2 | Stay Pending Appeal to the Supreme Court Denied | 542 |
| 92§3 | Stay of Spousal Support Order Denied | 543 |
| Section 93 — Costs of Action | | 543 |
| 93§1 | Costs in Family Law Matters | 543 |
| 93§2 | Costs Awarded..... | 544 |

Table of Contents

| | | |
|--|--|------------|
| 93§3 | Costs Not Awarded | 553 |
| 93§4 | Costs against the Director | 553 |
| 93§5 | Costs against Counsel..... | 554 |
| Section 94 — Application Before Child is Born..... | | 554 |
| 94§1 | General | 554 |
| Section 95 — Child as Party..... | | 554 |
| 95§1 | Appointment of a Child’s Representative (s. 95(3)) | 555 |
| 95§2 | Practice and Procedure for Appointing Counsel for a Child..... | 555 |
| Section 96 — Order for Relief on Behalf of Child | | 558 |
| Section 97 — Dispute Resolution | | 558 |
| 97§1 | General | 558 |
| Section 98 — Courses and Programs | | 559 |
| 98§1 | General | 559 |
| 98§2 | Regulations — Parenting After Separation Seminar..... | 559 |
| 98§3 | Terms of Parenting Order — Courses, Programs and Dispute Resolution | 559 |
| Section 99 — Private Hearing..... | | 560 |
| 99§1 | General | 560 |
| Section 100 — Publication and Broadcast Ban..... | | 560 |
| 100§1 | General | 560 |
| Part 5 — Other Actions | | |
| Section 101 — Breach of Promise to Marry..... | | 561 |
| 101§1 | Introduction to Part 5 | 561 |
| 101§2 | General | 562 |
| 101§3 | Engagement and Breach of Promise to Marry | 562 |
| Section 102 — Gifts in Contemplation of Marriage..... | | 562 |
| 102§1 | General | 562 |
| 102§2 | Engagement Ring as Conditional Gift | 562 |
| 102§3 | Gift vs. Trust..... | 565 |
| Section 103 — Actions May Not Be Brought or Maintained..... | | 565 |
| 103§1 | Obsolete Actions..... | 565 |
| | 103§1.1 Jactitation of Marriage | 565 |
| | 103§1.2 Damages for Adultery..... | 566 |
| | 103§1.3 Enticement of a Spouse | 566 |
| | 103§1.4 Harboring | 566 |
| | 103§1.5 Enticement of or Harboring a Child | 566 |
| Section 104 — Unity of Legal Personality Abolished | | 566 |
| 104§1 | Capacity of Married Person..... | 567 |
| Section 105 — Right to Pledge Credit Abolished..... | | 570 |
| Section 106 — Implied Agency Abolished | | 570 |
| Part 6 — Regulations | | |
| Section 107 — Regulations..... | | 570 |

Table of Contents

| | |
|--|-----|
| Part 7 — Transitional Provisions, Consequential Amendments, Repeals and Coming into Force | |
| Section 108 — Transitional | 572 |
| 108§1 New Evidence..... | 574 |
| 108§2 Retroactive Standing to Bring Application for Spousal Support under <i>Family Law Act</i> | 574 |
| 108§3 Non-application of <i>Family Law Act</i> | 575 |
| 108§4 Consent Required (s. 108(4)(b))..... | 576 |
| 108§5 Enforcement of Support Orders Made under Previous Legislation (s. 108(10))..... | 576 |
| Section 109 — Transitional Regulations | 576 |
| Sections 110-128 — Consequential Amendments | 577 |
| Section 129 — Repeals | 582 |
| Section 130 — Coming into Force | 582 |
| Regulations | |
| <i>Alberta Child Support Guidelines</i> | 583 |
| <i>Child Support Recalculation Program Regulation</i> | 603 |
| <i>Family Law Act General Regulation</i> | 615 |
| <i>Intake and Caseflow Management Regulation</i> | 621 |
| <i>Provincial Court Procedures (Family Law) Regulation</i> | 625 |
| Court of Queen’s Bench of Alberta Practice Notes | |
| Family Law Practice Note 1 — Parenting After Separation | 635 |
| Family Law Practice Note 2 — Family Law Regular and Special Chambers | 639 |
| Family Law Practice Note 3 — Family Law Conferences | 652 |
| Family Law Practice Note 4 — Dispute Resolution Officer Project (Calgary)/Child Support Resolution Project (Edmonton)..... | 658 |
| Family Law Practice Note 5 — Allegations of Sexual Abuse | 661 |
| Family Law Practice Note 6 — International Child Abduction — Hague Convention..... | 668 |
| Family Law Practice Note 7 — Interventions..... | 670 |
| Announcement to be Posted on Courts Website | 682 |
| Family Law Practice Note 8 — Child Custody/Parenting Evaluation..... | 683 |
| Family Law Practice Note 9 — Intake, Resolution and Caseflow Management — Calgary and Red Deer | 690 |
| Family Law Practice Note 10 — Access to Court Files in Family Law Proceedings | 694 |
| Forms under the <i>Family Law Act</i> | |
| General/Miscellaneous Forms | |
| CTS3459 Claim | 697 |
| CTS3460 Response | 700 |

Table of Contents

| | |
|--|-----|
| CTS3527 Notice of Appeal — Provincial Court Order | 702 |
| CTS3472 Certificate of Lawyer | 704 |
| CTS3510 Budget of Expenses | 705 |
| CTS3511 Request for Financial Information | 706 |
| CTS3513 Affidavit of Service — Applicant..... | 709 |
| CTS3514 Affidavit of Service — Respondent..... | 711 |
| CTS3551 Update Statement | 713 |
| Statements — Guardianship | |
| CTS3484 Adult’s Statement — Guardianship of Child (Statement G1)..... | 714 |
| CTS3485 Child’s Statement — Guardianship of Child (Statement G2)..... | 716 |
| CTS3486 Statement — Terminate Guardianship (Statement G3)... | 718 |
| CTS3487 Statement — Review of Guardian’s Significant Decision (Statement G4)..... | 720 |
| CTS3488 Statement — Court Direction for Guardian (Statement G5)..... | 722 |
| Statements — Parenting | |
| CTS3476 Statement — Parenting (Statement P1) | 724 |
| CTS3502 Statement — Parenting (Sole Guardian) (Statement P3) ... | 726 |
| CTS3477 Statement — Vary Parenting (Statement P2) | 728 |
| Statements — Contact | |
| CTS3461 Statement — Contact (Statement C1) | 731 |
| CTS3464 Statement — Vary Contact (Statement C2) | 733 |
| CTS3467 Statement — Permission from the Court (To Apply for Contact) (Statement C3) | 735 |
| Statements — Child Support | |
| CTS3469 Statement — Child Support (Statement CS1) | 737 |
| CTS3470 Recipient’s Statement — Vary Child Support (Statement CS2)..... | 740 |
| CTS3471 Payor’s Statement — Vary Child Support (Statement CS3)..... | 743 |
| Statements — Spousal/Partner Support | |
| CTS3473 Statement — Spousal/Partner Support (Statement S1) ... | 746 |
| CTS3474 Recipient’s Statement — Vary Spousal/Partner Support (Statement S2) | 749 |
| CTS3475 Payor’s Statement — Vary Spousal/Partner Support (Statement S3) | 751 |
| Statements — Enforcement (Time With Child) | |
| CTS3478 Statement — Enforcement of Time With a Child (Statement E1) | 754 |

Table of Contents

| | |
|---|-----|
| CTS3479 Statement — Reimbursement for Failure to Exercise Time (Statement E2)..... | 756 |
| CTS3480 Statement — Vary Enforcement (Time With a Child) (Statement E3)..... | 758 |
| Statements — Matters Available Only in Queen’s Bench | |
| CTS3504 Statement — Exclusive Possession of Home — Household Goods (Statement QB1)..... | 760 |
| CTS3506 Statement — Parentage (Statement QB2)..... | 763 |
| CTS3508 Statement — Irreconcilability (Statement QB3) | 765 |
| Reply Statements — Guardianship | |
| CTS3489 Reply to Adult’s Statement — Guardianship of Child (Reply Statement R-G1)..... | 767 |
| CTS3490 Reply to Child’s Statement — Guardianship of Child (Reply Statement R-G2)..... | 770 |
| CTS3491 Reply Statement — Terminate Guardianship (Reply Statement R-G3)..... | 772 |
| CTS3492 Reply Statement — Review of Guardian’s Significant Decision (Reply Statement R-G4) | 775 |
| CTS3493 Reply Statement — Court Direction for Guardian (Reply Statement R-G5)..... | 777 |
| Reply Statements — Parenting | |
| CTS3500 Reply Statement — Parenting (Reply Statement R-P1)... | 779 |
| CTS3501 Reply Statement — Vary Parenting (Reply Statement R-P2) | 781 |
| Reply Statements — Contact | |
| CTS3462 Reply Statement — Contact (Reply Statement R-C1).... | 784 |
| CTS3466 Reply Statement — Vary Contact (Reply Statement R-C2)..... | 786 |
| CTS3468 Reply Statement — Permission from the Court (To Apply for Contact) (Reply Statement R-C3) | 788 |
| Reply Statements — Child Support | |
| CTS3481 Reply Statement — Child Support (Reply Statement R-CS1)..... | 790 |
| CTS3482 Reply to Recipient’s Statement — Vary Child Support (Reply Statement R-CS2)..... | 792 |
| CTS3483 Reply to Payor’s Statement — Vary Child Support (Reply Statement R-CS3)..... | 794 |
| Reply Statements — Spousal/Partner Support | |
| CTS3494 Reply Statement — Spousal/Partner Support (Reply Statement R-S1) | 797 |
| CTS3495 Reply to Recipient’s Statement — Vary Spousal/Partner Support (Reply Statement R-S2) | 799 |

Table of Contents

| | |
|--|-----|
| CTS3496 Reply to Payor’s Statement — Vary Spousal/Partner Support (Reply Statement R-S3) | 801 |
| Reply Statements — Enforcement (Time With a Child) | |
| CTS3497 Reply Statement — Enforcement (Time With a Child) (Reply Statement R-E1) | 803 |
| CTS3498 Reply Statement — Reimbursement for Failure to Exercise Time (Reply Statement R-E2) | 805 |
| CTS3499 Reply Statement — Vary Enforcement (Time With a Child) (Reply Statement R-E3) | 807 |
| Reply Statements — Matters Available Only in Queen’s Bench | |
| CTS3505 Reply Statement — Exclusive Possession of Home — Household Goods (Reply Statement R-QB1) | 809 |
| CTS3507 Reply Statement — Parentage (Reply Statement R-QB2) | 811 |
| CTS3509 Reply Statement — Irreconcilability (Reply Statement R-QB3) | 813 |
| Index | 815 |