#### **Index**

#### **ACCOUNTANTS**

See FORENSIC EVIDENCE

#### **ACTUARIES**

See FORENSIC EVIDENCE

#### **ADMISSIBILITY ISSUES**

See also EXCLUSIONARY ISSUES

Business records, § 1:20

Expert testimony, Generally, § 5:2

Forensic evidence, § 6:37

Fresh evidence

see FRESH EVIDENCE IN FAMILY LAW ARBITRA-TION; FRESH EVIDENCE ON APPEAL

Hearsay

see HEARSAY

Medical reports, § 1:5

Party-retained experts

see EXPERT EVIDENCE

## ADMISSIONS

Generally, § 2:18, § 9:8

#### ADVERSE INFERENCES

Generally, § 7:15

#### ADVERSE INTEREST

Personal diaries/cards of third parties, admissibility, **§ 8:18** 

#### AFFIDAVIT EVIDENCE

Children's

see CHILDREN'S EVIDENCE

Motion for further and better affidavit of documents, § 7:5

Motions, on, § 2:9

Provincial expert evidence provisions, **APP 6A § 6A:1 et seq.** 

#### AFFIDAVIT EVIDENCE—Cont'd

Trial, at, § 2:22

#### **ALBERTA**

Expert evidence provisions, APP 6A § 6A:1

New rules of court, 12:1 et seq.

# APPEALS

See FRESH EVIDENCE ON APPEAL

#### **ASSESSMENTS**

Generally

see EXPERT EVIDENCE

Children's evidence

see CHILDREN'S EVIDENCE

#### **BRITISH COLUMBIA**

Expert evidence provisions, APP 6A § 6A:2

## **BURDEN OF PROOF**

See CHARTER LITIGATION

#### **BUSINESS RECORDS**

See EVIDENCE ACTS, PROVINCIAL; HEARSAY exceptions to rule

#### **BUSINESS VALUATION**

See FORENSIC EVIDENCE

# CANADIAN CHARTER OF RIGHTS AND FREEDOMS

See CHARTER LITIGATION

#### **CHARTER LITIGATION**

Generally, § 14:1, § 14:20, § 14:21 Burden and standard of proof, § 14:5 to § 14:10

justifying limitation, § 14:8

CHARTER LITIGATION—Cont'd Burden and standard of proof,	CHARTER LITIGATION—Cont'd Social science evidence, § 14:14 to
§ 14:5 to § 14:10—Cont'd proving breach, § 14:6 case study (Gosselin v. Quebec (Attorney General)),	§ 14:19  Time limitation issue, § 14:2  Types of evidence, § 14:11 to  § 14:13
§ 14:7 remedy, § 14:9 case studies, § 14:10	adjudicative facts, § 14:12 legislative facts, § 14:13
R. v. Carosella, § 14:10 Schachter v. Canada, § 14:10 Charter breach, identifying, § 14:1,	CHILD PROTECTION PROCEEDINGS See also EXPERT EVIDENCE
§ 14:2, § 14:6 Discrimination, evidence re, § 14:14 to § 14:19	Bringing children to a place of safety, § 11:7  Fresh evidence on appeals, § 11:60  Motions for summary judgment
Equality claim, § 14:2  Quebec (Attorney General) v. A.,  § 14:2	generally, § 11:14 genuine issue for trial, § 11:16 test, § 11:15
Evidence at first instance, § 14:3, § 14:4 case study re (A. (A.) v. B. (B.)), § 14:4	Overview, § 11:1 to § 11:6 duty to act fairly, § 11:5 evidence, general principles,
sufficiency of record, § 14:4  Expert evidence, APP 14B, § 14:14  to § 14:19, § 14:21	§ 11:4  Temporary care and custody hearings, § 11:8 to § 11:13
Family law and, § 14:20 Forms of evidence, § 14:14 to § 14:19	"credible and trustworthy in the circumstances," § 11:12 person having charge, § 11:9
Bedford v. Canada, § 14:19 expert evidence, § 14:15	status review proceedings, § 11:13 test, temporary care hearing,
Halpern v. Toronto (City), § 14:18 social science evidence, § 14:16	\$ 11:10 variation, temporary care order, \$ 11:11
Framework of Charter claim, § 14:2 Life, liberty and security of person claim, § 14:2	Trial burden of proof, § 11:17 business records, § 11:25
Marriage, common law definition case study (Halpern v. Toronto (City)), § 14:15 evidence, § 14:15	children's statements, § 11:26 expert assessments, § 11:27 Social Science Literature and Evidence, § 11:29
Practise and, § 14:1 Remedy issue, § 14:2, § 14:9 Reported cases, chart re, APP 14A,	general hearsay exceptions, § 11:20 informality provisions, § 11:20
§ 14:21	onus, § 11:18

#### CHILDREN'S EVIDENCE CHILD PROTECTION PROCEEDINGS—Cont'd —Cont'd Trial—Cont'd Judicial interviews past parenting evidence, § 11:24 generally, § 4:36 res judicata/issue estoppel, post-decision, § 4:38 § 11:23 purpose, § 4:37 section 93(1) CYFSA, § 11:22, Motions § 11:24 contempt motions, § 4:13 statutory exception to the evidence on, § 4:7 hearsay rule, § 11:24 summary judgment, § 4:14 society staff as expert witnesses, Police records, § **4:13.50** § 11:28 Practical considerations re child's testimony, § 4:35 CHILDREN'S EVIDENCE Pre-trial evidence, § 4:7 to § 4:14 Generally, § 4:1, § 4:39 Quebec Family Law, § 13:4 to Affidavits § 13:10 child's, § 4:9 best interests of child, § 13:5 clinical letters, reports/notes capacity of child to testify, attached to, § 4:10 testimony of a child, § 13:6 hearsay evidence in, § 4:8 cross-examination, § 13:7 Amicus curiae. § 4:33 definition of maturity, § 13:6 Assessment reports, § 4:12 practical aspects of child's Children's statements, child protectestimony, testimony of a tion hearings, § 11:26 child, § 13:8 Child's communication capacity, role of child's attorney, § 13:9, psychological research re, § 13:10 § 4:5 court of appeal trilogy, § 13:10 Child's legal capacity to testify, testimony of a child, § 13:4 to § 4:6 § 13:8 Child's notes categories of, § 4:11 Sworn vs. unsworn evidence, § 4:6 evidentiary force of, § 4:11 Third parties, child's evidence through, § 4:27 to § 4:33 privacy interest, § 4:11 amicus curiae, § 4:33 Child's participation rights, § 4:2 counsel for child, § 4:32 Child's wishes and preferences, § 4:3 hearsay and state of mind, § 4:28 "Common sense approach" to, hearsay related through another § 4:6 witness, videotape, etc., § 4:27 Communication of evidence, capacmental health professional, ity re, § 4:6 testimony of, § 4:31 Court discretion, § 4:6, § 4:19 Office of the Children's Lawyer, Hearsay evidence in affidavit, § 4:8 § 4:32, § 5:34 Interim applications, clinical letters, text messages, § 4:30 reports/notes, § 4:10 video and audiotape, § 4:30 Judge's chambers, testimony in, § 4:34 voir dire, § 4:28, § 4:29

# CHILDREN'S EVIDENCE —Cont'd

Trial, at, § 4:15 to § 4:22

accommodations to child, § 4:23 to § 4:26

age of child, § 4:20

child's ability to communicate, assessment of, § 4:22

child's understanding of nature of oath, assessment of, § 4:21

closed-circuit television, § **4:24** court's discretion

criteria for making decision, § 4:16

cross-examination of child, § 4:26

information source for court, § 4:18

legislative reforms, § 4:23 methods of bringing evidence before court, § 4:15

support person to child, § 4:25 third parties

see third parties, child's evidence through, supra timing for making decision, § 4:17

U.N. Convention on the rights of the Child, § 4:2

Voice of the Child Report, § 4:4, § 5:21

#### COUNSEL, ROLE OF

Amicus curiae, § 4:33
Evidence gathering
see FORENSIC EVIDENCE
Office of the Children's Lawyer,
§ 4:32, § 5:21

#### **DISCLOSURE**

Forensic evidence, § 6:30
Inadvertent disclosure, discretion re preservation of privilege, § 8:8
Non-disclosure of assets/income determination, § 3:27
Records of assessor, § 5:27

#### DISCLOSURE—Cont'd

Rules re

see FAMILY LAW RULES (ONTARIO) or FAMILY LAW RULES (ALBERTA)

#### **DISCOVERY**

See ELECTRONIC DISCOVERY

#### **DIVORCE**

Generally, § 2:26

#### **ELECTRONIC**

Discovery

see ELECTRONIC DISCOVERY

Recording evidence, § 2:22 Records, § 1:9

#### ELECTRONIC DISCOVERY

Generally, § 3:1 to § 3:7, § 3:28

Costs of production, § 3:17

Deleted information, § 3:11

"Documents," meaning of, § 3:2

Atlantic provinces, § 3:3 Central and Western provinces,

§ 3:4

Territories, § 3:5

Electronic preservation notice, § 3:20

Electronic records, discoverability list, § 3:7

Examinations for discovery, § 3:21

Family law cases re, § 3:24

non-disclosure of assets/income determination, § 3:27

Family Law Rules and, § 3:23

Form of production, § 3:8, § 3:9

Hard drive, court-ordered production, § 3:6

Litigation hold, § 3:20

Metadata, § 3:6, § 3:12

Non-parties, production from, § 3:27

Practical advice, § 3:19 to § 3:21 Privilege re production, § 3:16

#### **ELECTRONIC DISCOVERY** EVIDENCE—Cont'd -Cont'd Opinion Problems re, Generally, § 3:1 to see OPINION EVIDENCE § 3:7 to § 3:17 Ouebec Production of deleted data - Mareva see EVIDENCE ACTS, orders, § 3:25 **PROVINCIAL** Remedies, Stolen Documents, § 3:26.50 see FAMILY LAW RULES Rules of Civil Procedure vs. Family (ONTARIO) or FAMILY Law Rules, § 3:23 LAW RULES (ALBERTA) Sedona Conference, § 3:6 Statutes re Sedona Principles re managing see EVIDENCE ACTS, e-discovery, § 3:18 **PROVINCIAL** Social media, § 3:7 **EVIDENCE ACTS, PROVINCIAL** Sources of electronic records, § 3:6 Generally, § 1:1 Spoliation and preservation, § 3:13 Business records, § § 1:2 to § 1:21 Canadian approach to, § 3:14 Ares v. Venner, effect of, § 1:12 sanctions, § 3:15 "business," defined, § 1:14 **EVIDENCE** common law, at, § 1:11 Admissibility hearsay, law re, § 1:11, § 1:12 see ADMISSIBILITY ISSUES "in the usual and ordinary course of business," § 1:17 Affidavit lack of motive to misrepresent, see AFFIDAVIT EVIDENCE § 1:18 Charter litigation negative inferences, § 1:21 see CHARTER LITIGATION "records" defined, § 1:14 Children's regularity and contemporaneity, see CHILDREN'S EVIDENCE § 1:16 Electronic requirements re admissibility, see ELECTRONIC § 1:20 **DISCOVERY** statutory provisions re, § 1:13 to Exclusion § 1:21 see EXCLUSIONARY ISSUES Communications made during mar-Expert riage, privilege re, § 1:2 Electronic records, § 1:9 see EXPERT EVIDENCE Heirs, actions by/against, § 1:8 Forensic Medical reports, § 1:22 to § 1:30 see FORENSIC EVIDENCE all reports to be produced, § 1:24 Fresh cross-examination, right of, see FRESH EVIDENCE IN § 1:28 FAMILY LAW ARBITRAelection, § 1:25 TION; FRESH EVIDENCE ON APPEAL hearsay in, § 1:27 medical reports not expert Obtaining reports, § 1:26 see FORENSIC EVIDENCE; TRIALS, FAMILY LAW notice, § 1:29

#### EVIDENCE ACTS, PROVINCIAL **EVIDENCE ACTS, PROVINCIAL** -Cont'd —Cont'd Medical reports, § 1:22 to § 1:30 Quebec, 13:1 et seq.—Cont'd —Cont'd illegally obtained evidence, service requirements re § 13:11 to § 13:16—Cont'd testimony, § 1:30 authenticity of recordings, statutory provisions re, § 1:23 § 13:12 Opinion evidence, limitation on, breach of fundamental rights, § 1:3 to § 1:7 § 13:14 leave, granting of, § 1:7 bringing the administration of leave requirements, § 1:6 justice into disrepute, § 13:15 medical reports, admissibility, circumstances under which § 1:5 obtained, § 13:13 to per trial vs. per fact in issue, § 13:16 § 1:4 principle of proportionality, Provisions, table of, APP 6A § 13:3 § 6A:1 et seq. Quebec, 13:1 et seq. principle of reasonableness, § 13:3 generally, § 13:2 table of concordance, App. 1D children, § 13:4 to § 13:10 best interests of child, § 13:5 **EXCLUSIONARY ISSUES** capacity of child to testify, See also ADMISSIBILITY ISSUES testimony of a child, Adultery, evidence re, § 8:14 § 13:6 Personal diaries/cards of third parcourt of appeal trilogy, § 13:10 ties (obtained by adverse intercross-examination, § 13:7 est parties without consent), definition of maturity, § 13:6 admissibility, § 8:18 practical aspects of child's Polygraph evidence, admissibility testimony, § 13:8 of, § 8:17 right to be heard, § 13:4 Privilege role of child's attorney, § 13:9, see PRIVILEGE § 13:10 Video/audio tape-recorded testimony of a child, § 13:4 to conversation, admissibility, § 13:8 § 8:15 expert evidence, § 13:17 to § 13:19 **EXPERT EVIDENCE** courts not bound, § 13:18 See also FORENSIC EVIDENCE probative value of court-ap-Generally, § 5:1, § 5:51 pointed expert, § 13:19 Admissibility, **APP 6A § 6A:5** probative value of jointly Alberta, expert evidence provisions, appointed expert, § 13:19 APP 6A § 6A:1 foundations, § 13:1 Assessments illegally obtained evidence, § 13:11 to § 13:16 assessment order, § 5:37

costs of, § 5:20, § 5:36

generally, § 13:16

#### EXPERT EVIDENCE—Cont'd EXPERT EVIDENCE—Cont'd Assessments—Cont'd Child protection hearings, § 5:41 to court-appointed § 5:44—Cont'd see court-appointed assesscourt-ordered assessments in ments, infra -Cont'd joint retainer letter, § 5:37 content of order, § 5:42 ordering, § 5:32 to § 5:37 costs, § 5:42 factors influencing decision to "parenting capacity" focus, order/not to order, § 5:33 § 5:42 "focused assessment," § 5:33 report, contents of, § 5:42 jurisprudence re, § 5:32 parent-retained experts, § 5:44 reports from Ontario Office of Costs the Children's Lawyer, Alberta Rules of Civil Procedure, § 5:34 APP 6A § 6A:1 test re, § 5:32 Court-appointed assessments timing, § 5:32 assessment process, § 5:20 Assessors assessment report, § 5:20 court-appointed child protection hearings, § 5:20 see court-appointed assesscost, § 5:20 ments, infra critique of, § 5:39 judicial attitudes to disclosure of records of assessor, see judicial attitudes to § 5:27 assessors/experts "fact finding," § 5:20 judicial rejection of, § 5:35 forms of assessment, § 5:20 judicial selection of, § 5:35 higher status professional, selection of, § 5:35 privileging, § 5:20 British Columbia, expert evidence interviews, § 5:20 provisions, APP 6A § 6A:2 methodology, § 5:20 Calling at trial, rules re "multi-modal" assessment, Alberta Rules of Civil Procedure, § 5:20 APP 6A § 6A:1 negative consequences, potential, Manitoba provisions, APP 6A § 5:26 § 6A:3 private disputes, § 5:20 Saskatchewan provisions, APP psychological tests, § 5:20 6A § 6A:12 purposes of, § 5:22 Charter litigation and, APP 14B, child's out-of-court statements, § 14:14 to § 14:19, § 14:21 § 5:24 Child protection hearings, § 5:41 to information for parents and § 5:44 settlements, § 5:25 generally, § 5:41 to § 5:44 information re child, § 5:24 agency-retained professionals/ judge education, § 5:23 employees as "experts," § 5:43 settlements and, § 5:12 court-ordered assessments in social workers vs. psychologists, basis for ordering, § 5:42 etc., § 5:20

#### EXPERT EVIDENCE—Cont'd EXPERT EVIDENCE—Cont'd Court-appointed assessments Judicial attitudes to assessors/ -Cont'd experts, § 5:28 to § 5:31 Voice of the Child Reports, —Cont'd § 5:21 broad approach, § 5:30 Court-appointed experts expert recommendations, § 5:30 Alberta Rules of Civil Procedure narrow approach, § 5:28, § 5:29 provisions, APP 6A § 6A:1 scepticism, § 5:28 B.C. Rules of Civil Procedure settlement effect of assessment, provisions, APP 6A § 6A:2 § 5:30 New Brunswick Rules of Civil Judicial weight and discounting Procedure provisions, APP assessor/expert testimony, 6A § 6A:4 § 5:45 to § 5:50 Newfoundland and Labrador application of incorrect Rules of Civil Procedure, principles, § 5:50 APP 6A § 6A:5 further assessments and critiques, Northwest Territories Rules of § 5:47 Civil Procedure, APP 6A incompetence/inaccuracies, § 6A:6 § 5:49 Prince Edward Island Rules of objectivity issues, § 5:46 Civil Procedure provisions, prior professional role and bias, APP 6A § 6A:10 § 5:48 Demand for expert's attendance Manitoba, expert evidence provi-Alberta Rules of Civil Procedure, sions, APP 6A § 6A:3 APP 6A § 6A:1 Mohan case, effect of, § 5:2 to Family litigation, unique nature of, § 5:13 § 5:6 generally, § 5:1 admissibility criteria, § 5:2 court-appointed assessors, settlements and, § 5:12 cases subsequent to Mohan, § 5:2 event focus v. relationship/ civil cases and, § 5:4 personality orientation, dangers of expert evidence, § 5:2 § 5:9 expert witness jury vs. judge alone, § 5:7 qualifying as, § 5:3 litigation between parties vs. role of, § **5:3** "best interest inquiry," family litigation and § 5:11 see family litigation, unique party vs. court-appointed expert, nature of, supra § 5:10 mental health professionals, retrospective vs. prospective, criminal context, § 5:2 § 5:8 Mohan discussed, § 4:7 Judges as "gatekeepers," § 5:1 scientific "reliability," § 5:2 Judicial attitudes to assessors/ New Brunswick, expert evidence experts, § 5:28 to § 5:31 provisions, APP 6A § 6A:4 best interests of the child, as val-Newfoundland and Labrador, expert ue-based determination, evidence provisions, APP 6A

§ 6A:5

§ 5:28

#### EXPERT EVIDENCE—Cont'd EXPERT EVIDENCE—Cont'd Social science knowledge and Northwest Territories, expert evidence provisions, APP 6A child-related litigation, § 5:14 § 6A:6 to § 5:19 Notice to adduce expert evidence expert witness testimony, § 5:19 "filtering" process, § 5:15 Alberta Rules of Civil Procedure, APP 6A § 6A:1 judge's common sense, § 5:18 judge's reading, § 5:16 Nova Scotia, expert evidence provisions, APP 6A § 6A:7 judicial education programs, § 5:17 Ontario, expert evidence provisions, APP 6A § 6A:9 judicial experience, § 5:18 judicial notice, § 5:16 Opinion evidence at trial legislation and precedents, § 5:15 B.C. Rules of Civil Procedure Trial, rules re provisions, APP 6A § 6A:2 Participant experts, § 5:5 court directions, APP 6A § 6A:9 expert witness reports, serving, Party-retained experts, admissibility APP 6A § 6A:5 issues critique of court-appointed New Brunswick provisions, **APP** 6A § 6A:4 assessment, § 5:39 very long trials, Alberta Rules of limitations on opinions of, § 5:38 Civil Procedure, APP 6A therapist/physician, expert § 6A:1 testimony by, § 5:40 Yukon, expert evidence provisions, Pre-trial conference, APP 6A APP 6A § 6A:13 § 6A:5, APP 6A § 6A:9, APP 6A § 6A:10 FAMILY LAW RULES (ONTARIO) Prince Edward Island, expert evi-Generally, § 2:1, § 2:27 dence provisions, APP 6A Admission of facts, § 2:18 § 6A:10 Conferences, § 2:4 Qualification as expert, § 5:31 Disclosure, documentary, § 2:6 Quebec, expert evidence provisions, Disclosure, financial, § 2:5 APP 6A § 6A:11 financial statements, § 2:5 courts not bound by, § 13:18 full and frank disclosure, § 2:5 probative value of court-aplimitation on, § 2:5 pointed expert, § 13:19 material change, § 2:5 probative value of jointly scope of, § 2:5 appointed expert, § 13:19 Divorce, § 2:26 role of, § 13:17 to § 13:19 Motions Reports, § 5:20, § 5:42 generally, § 2:9 SCC criminal case jurisprudence, affidavits, § 2:9 application to family cases, applications, etc., vs., § 2:2 § 5:13 bifurcation, for, § 2:17 Settlement conference brief, APP 6A § 6A:4 change/variation to final order, § 2:15 Settlements, assessment effect on, § 5:12, § 5:30 consent/unopposed, § 2:10

#### FAMILY LAW RULES (ONTARIO) -Cont'd

Motions-Cont'd contempt proceedings, § 2:14 evidence on, § 2:9 hearsay rules and, § 2:9 striking pleadings/denying audience, § 2:16 summary judgment, for, § 2:13 temporary orders, re, § 2:9 urgent basis, on, § 2:11 without notice, § 2:12 Particulars, demand for, § 2:3

Pleadings, § 2:2

Ouestioning, § 2:7 third parties, § 2:8

Settlement conferences, § 2:4

Starting case, § 2:2

Third parties, disclosure/ questioning re, § 2:8

Trials, § 2:19 to § 2:25

affidavit evidence, § 2:22

calling opposing party as witness, § 2:25

electronic recording evidence, § 2:22

expert witness evidence, APP 6A § 6A:5, § 2:23

financial statements, § 2:20 net family property statements, § 2:20

reading in evidence, § 2:24 trial record, APP 6A § 6A:5, § 2:21

# **FAMILY LAW RULES** (ALBERTA), NEW

See RULES OF COURT (ALBERTA)

#### FAMILY LITIGATION

See CHARTER LITIGATION: EXPERT EVIDENCE; TRI-ALS, FAMILY LAW

## **FAMILY VIOLENCE AND** PARENTING DECISIONS

Acquittals, § 16:4

Evidence, Affidavit and Viva Voce Evidence, § 16:2

Evidence, from the Children8217s Aid Society Workers and/or Police, including 911 Recorded Calls, § 16:3

#### FINANCIAL DISCLOSURE

See FAMILY LAW RULES (ONTARIO) OR FAMILY LAW RULES (ALBERTA)

#### FINANCIAL EXPERTS

See EXPERT EVIDENCE

#### FINANCIAL STATEMENTS

See FORENSIC EVIDENCE

#### FORENSIC EVIDENCE

See also EXPERT EVIDENCE Generally, § 6:1, § 6:5 Accountants, of, § 6:5 to § 6:12 circumstances requiring, § 6:7 income analysis, § 6:9 miscellaneous functions, § 6:10 net family property determinations, § 6:8 role of at different stages in case, § 6:11

Actuaries, of, § 6:5

Analytic procedures, § 6:22 "Business valuation," defined, § 6:4

Canadian Society of Forensic Science, § 6:5

Counsel's role in obtaining, § 6:26 to § 6:31

disclosure, § 6:30 expert, selecting, § 6:27 joint expert issues, § 6:28 litigation privilege issues, § 6:30 overview re, § 6:26 working with expert, § 6:29

FORENSIC EVIDENCE—Cont'd	FORENSIC EVIDENCE—Cont'd
Experts	Reports, § 6:32 to § 6:36—Cont'd
cost/benefit analysis re, § 6:12	B.C. Family Law Rules, APP 6A
opinion of, § 6:6	§ 6A:2
reports	B.C. Rules of Civil Procedure,
see reports, infra	APP 6A § 6A:2
role of, <b>§ 6:6</b>	critique reports, § 6:35
Financial statements, review of,	income reports, § 6:34
§ 6:14	limited critique reports, § 6:35
audit, § <b>6:15</b>	New Brunswick Rules of Civil
audit vs. review, § 6:20	Procedure, APP 6A § 6A:4
circumstances suggesting need	Newfoundland and Labrador
for, § 6:19	Rules of Civil Procedure,
compilation, § 6:16	APP 6A § 6A:5
example, <b>§ 6:18</b>	Northwest Territories Evidence
review, <b>§ 6:17</b>	Act, <b>APP 6A § 6A:6</b>
"Forensic," defined, § 6:2	Nova Scotia Rules of Civil Procedure, <b>APP 6A § 6A:7</b>
"Forensic accounting"	
see also accountants, of, supra	Ontario Rules of Civil Procedure APP 6A § 6A:9
defined, § 6:3	opposing expert's
Forensic document examiners, role of, § 6:5	see opposing expert's report,
Funds tracing, § 6:23	supra
analysis on discounts, minority	Prince Edward Island Evidence
interests, § 6:25.50	Act, APP 6A § 6A:10
described, § 6:23	Prince Edward Island Rules of
examples of, § 6:23	Civil Procedure, <b>APP 6A</b>
"first in, first out" approach,	§ 6A:10
§ 6:24	Quebec Rules of Civil Procedure
"pro-rata" method, § <b>6:25</b>	APP 6A § 6A:11
Health care professionals, of, § 6:5	"reports vs. schedules" issue,
Lifestyle analysis, § 6:21	§ 6:36
Opposing expert's report, checklist	types of reorts, § <b>6:32 to</b> § <b>6:36</b>
re, § <b>6:42</b>	valuation reports, § 6:33
Presentation of, § 6:37 to § 6:41	Yukon Evidence Act, <b>APP 6A</b>
admissibility, § 6:37	§ 6A:13
at trial, § 6:38	
procedural rules, § 6:39 to § 6:41	FRESH EVIDENCE ON APPEAL
Evidence Act, § 6:40	Generally, § 10:1
Family Law Rules, § 6:39	Admission of fresh evidence,
non-Ontario jurisdictions,	exception, § 10:3
§ 6:41	Child protection appeals, § 10:11,
Reports, § 6:32 to § 6:36	§ 11:30
Alberta Rules of Civil Procedure,	Family law appeals
APP 6A § 6A:1	consent, § 10:10

# FRESH EVIDENCE ON APPEAL —Cont'd Family law appeals—Cont'd court's discretion to refuse to

court's discretion to refuse to admit, § 10:10

due diligence, § 10:7

evidence about events occurring after trial, § 10:10

reasonably expected to affect result, § 10:9

relevant and credible, § 10:8 where evidence would not be admissible at trial, § 10:10

where parties were not represented in court below, § 10:10

Family Law Rules appeal provisions, § 10:5

Fresh evidence vs new evidence, § 10:4

Practice Directions, § 10:5

Procedural considerations, § 10:2

Re-opening case to introduce further evidence, § 10:17

after judgment rendered, § 10:18 before judgment rendered,

§ 10:19

Setting aside or varying order in court that made it, § 10:12

court's jurisdiction to set aside or vary own orders, § 10:12

tests for setting aside or varying under R. 25(19) FLR, § 10:13

Statutory provisions, § 10:5

# **FUNDS, TRACING**

See FORENSIC EVIDENCE

# HEALTH CARE PROFESSIONALS

See also MEDICAL REPORTS
Evidence of, § 6:5
Mental health professionals, § 4:31,
§ 5:2

#### **HEARSAY**

Generally, § 9:1, § 9:25

Admitting, advocate's analysis for, § 9:2

Affidavits, children's evidence, § 4:8

Baldree case, § 9:4

Business records and, § 1:11, § 1:12

Child's evidence, § 4:8, § 4:27, § 4:28

Definitions of, § 9:4

Exceptions to rule, categorical see also principled approach to, infra

admissions by party, § 9:8 emails and text messages, § 9:8

limitations on, § 9:8

scope of, § 9:8

business records, § 9:10

common law exception, § 9:12 statutory exceptions, § 9:11

children's wishes, statements re, § 9:16

former testimony, § 9:9

limited admissibility, § 9:24

list of, § 9:7

past recollection recorded, § 9:13 present intention to do future act,

§ 9:15

statements re physical/mental/ emotional state, § 9:14

"state of mind," statements re, § 9:14

Excluding, advocate's analysis for, § 9:2

Khan case, significance of, § 9:2, § 9:17 to § 9:23

Medical reports, in, § 1:27

Motions and, § 2:9

Non-hearsay purposes of out-ofcourt statements, § 9:5

Onus re, § 9:2

#### HEARSAY-Cont'd INTIMATE PERSONAL VIOLENCE—Cont'd Principled approach to see also exceptions to rule, Evidence—Cont'd categorical, supra waiver of privilege, § 15:26, generally, § 9:17 to § 9:23 § 15:27 **Tort Claims** Blackman case, § 9:23 assault, § 15:4 Bradshaw case, § 9:23 battery, § 15:5 child abuse hearsay exception, defamation, § 15:7 § 9:18 intentional infliction of mental children's statements beyond Khan, § 9:21 suffering/emotional distress/ K.G.B. exception, § 9:22 nervous shock, § 15:6 Khan case, § 9:17 to § 9:23 internet harassment, § 15:9 libel, § 15:7 Khelawon case, as complete statement of, § 9:23 limitation periods, § 15:3 limited admissibility and, § 9:24 public disclosure of private infor-"motive to lie" analysis, § 9:23 mation, § 15:10 slander, § 15:7 necessity factor, § 9:19 tortious invasion of privacy, reliability factor, § 9:20 § 15:8 Rule re, § 9:1 JUDGES HEIRS, ACTIONS BY/AGAINST Court-appointed assessment, Generally, § 1:8 purposes of, § 5:23 INTIMATE PERSONAL Expert evidence, assessment by **VIOLENCE** see EXPERT EVIDENCE "Gatekeepers," as, § 5:1 Generally, § 15:1, § 15:28 Judge's chambers, testimony in, Damages and quantification, § 4:34 aggravated damages, § 15:13 Social science knowledge, attitudes future care cost, § 15:12 general damages, § 15:11 see EXPERT EVIDENCE punitive damages, § 15:14 Evidence **LAWYERS** challenges, § 15:15 See COUNSEL, ROLE OF character evidence, § 15:24 LITIGATION PRIVILEGE corroborative evidence, § 15:23 See PRIVILEGE criminal convictions, § 15:20 experts, § 15:16 **MANITOBA** marriage counsellors, § 15:21 Charter litigation, APP 14D paramedic/medical reports, § 14D:1 et seq. § 15:18 generally, APP 14D § 14D:1 participatory evidence, § 15:17 burden of proof, APP 14D police reports, § 15:19 § 14D:4 to 14D:6 similar fact evidence, § 15:25 justifying the breach, APP 14D

therapists, § 15:22

§ 14D:5

#### MANITOBA—Cont'd MANITOBA—Cont'd Charter litigation, APP 14D Evidence Act, APP 1B § 1B:1 et § 14D:1 et seq.—Cont'd seq.—Cont'd burden of proof, APP 14D electronic records, APP 1B § 14D:4 to 14D:6—Cont'd § 1B:5 proving the breach, APP 14D evidence as to sexual relations, § 14D:4 **APP 1B § 1B:2** remedy, APP 14D § 14D:6 limitation, opinion evidence, **APP 1B § 1B:3** evidence at first instance, APP 14D § 14D:3 medical reports, APP 1B § 1B:4 privilege for marital communicaframework of claim, APP 14D tions, **APP 1B § 1B:1** § 14D:2 Exclusionary issues, APP 8B standard of proof, APP 14D § 8B:1 et seq. § 14D:4 to 14D:6 generally, APP 8B § 8B:1 justifying the breach, APP 14D disclosure made to third party, § 14D:5 APP 8B § 8B:5 proving the breach, APP 14D disclosure of privileged com-§ 14D:4 munications to prove settleremedy, APP 14D § 14D:6 ment, APP 8B § 8B:4 Child protection proceedings, APP discussions at case conference, 11B § 11B:1 et seq. APP 8B § 8B:6 generally, **APP 11B § 11B:1** documents at pre-trial, APP 8B appeals in child protection cases, § 8B:7 APP 11B § 11B:7 implied undertaking, litigation bringing children to a place of privilege, APP 8B § 8B:8 safety, APP 11B § 11B:2 inadvertent disclosure of privifresh evidence on appeal, APP lege documents, APP 8B 11B § 11B:8 § 8B:3 hearsay evidence in child protecsolicitor-client privilege, APP 8B tion cases, APP 11B § 8B:2 § 11B:5 Expert evidence provisions, APP records from third parties, APP 6A § 6A:4 11B § 11B:6 Family Law Rules, APP 2B § 2B:1 temporary and permanent orders, et seq. APP 11B § 11B:3 generally, APP 2B § 2B:1 voluntary placement agreements, affidavit evidence at trial, APP APP 11B § 11B:4 2B § 2B:23 E-discovery, APP 3B basics, APP 2B § 2B:2 to 2B:5 Evidence, types and forms, **App.** answering a petition, APP 2B 14A4 § 2B:3 Evidence Act, APP 1B § 1B:1 et complete pleadings, seq. importance of, APP 2B § 2B:5 business records, APP 1B § 1B:6 petition, APP 2B § 2B:2 documentary evidence as to facts

reply, APP 2B § 2B:4

in issue, APP 1B § 1B:7

#### MANITOBA—Cont'd MANITOBA—Cont'd Family Law Rules, APP 2B § 2B:1 Forensic evidence, APP 6C § 6C:1 et seq.—Cont'd et seq. case conferences, APP 2B assets acquired during marriage, § 2B:18 APP 6C § 6C:3 family evaluator, APP 2B assets acquired prior to marriage, § 2B:12 APP 6C § 6C:3 family property reference, APP expert reports, APP 6C § 6C:1 2B § 2B:20 expert witness role, APP 6C financial disclosure, APP 2B § 6C:4 § 2B:6 to 2B:10 family property reference, APP failure to comply with 6C § 6C:2 financial disclosure, APP responding to expert evidence, 2B § 2B:10 **APP 6C § 6C:5** financial statement and Fresh evidence on appeal, APP 10B disclosure under the child § 10B:1 et seq. support guidelines, APP adducing fresh evidence on 2B § 2B:8 appeal, APP 10B § 10B:9 urgent relief and financial setting aside or varying an order. statements, APP 2B APP 10B § 10B:10 to § 2B:9 10B:13 when financial statement or materials required for a motion parts of a financial stateunder the Court of ment are not required, Queen's Bench Rules, APP 2B § 2B:7 APP 10B § 10B:11 interim proceedings, APP 2B rules regarding, APP 10B § 2B:13 to 2B:17 § 10B:10 affidavit evidence, APP 2B varying a custody order, **APP** § 2B:15 10B § 10B:12 improper affidavits, APP 2B varying a support order, APP § 2B:16 10B § 10B:13 interrogatories and examinastatutory provisions, APP 10B tions, App. 2B § 10B:1 motion brief, APP 2B § 2B:17 appealing, Child Protection on notice, APP 2B § 2B:13 Proceeding, APP 10B without notice, APP 2B § 10B:5 § 2B:14 appealing, from Court of mediation, APP 2B § 2B:11 Queen's Bench, APP 10B parent information program, APP § 10B:4 2B § 2B:19 appealing, from Master, APP pre-trial conferences, APP 2B 10B § 10B:2 § 2B:21 appealing, from Provincial trial record, APP 2B § 2B:22 Court, APP 10B § 10B:3 variation of final orders, App. 2B appealing, The Family Maintechild support, App. 2B nance Act, APP 10B spousal support, App. 2B § 10B:6

# MANITOBA—Cont'd Fresh evidence on appeal, APP 10B **§ 10B:1 et seq.**—Cont'd statutory provisions, APP 10B § 10B:1—Cont'd appealing decision made in chambers, APP 10B § 10B:8 appeals in the Court of Appeal, APP 10B § 10B:7 Hearsay rule, APP 9B § 9B:1 et seq. generally, APP 9B § 9B:1 child protection cases, APP 9B § 9B:3 children's evidence, APP 9B § 9B:4 exceptions, APP 9B § 9B:6 to 9B:9 bank records and business records, APP 9B § 9B:6 documentary evidence, APP 9B § 9B:8 hearsay evidence in affidavits, APP 9B § 9B:9 medical reports, APP 9B § 9B:7 former testimony, APP 9B § 9B:10 out-of-court statements, APP 9B § 9B:11 principles to consider, APP 9B

#### MARRIAGE

§ 9B:2

Common law definition

case study (Halpern v. Toronto (City)), § 14:15
evidence, § 14:15
Communications made during, § 1:2

statements made by deceased

person, APP 9B § 9B:5

#### MEDICAL PERSONNEL

See HEALTH CARE PROFES-SIONALS

#### MEDICAL REPORTS

Admissibility, § 1:5
Election re, § 1:25
Hearsay issue, § 1:27
Provincial statutes re
chart, APP 6A § 6A:1 et seq.
provisions
see EVIDENCE ACTS,
PROVINCIAL

#### **MOTIONS**

Affidavit evidence and see AFFIDAVIT EVIDENCE
Children's evidence and see CHILDREN'S EVIDENCE
Hearsay and, § 2:9
Motion for further and better affidavit of documents, § 7:5
Motions for summary judgment genuine issue for trial, § 11:16
test, § 11:15
Rules re
see FAMILY LAW RULES
(ONTARIO) OR FAMILY
LAW RULES (ALBERTA)

# **NEW BRUNSWICK**

Expert evidence provisions, APP 6A § 6A:4

# NEWFOUNDLAND AND LABRADOR

Expert evidence provisions, APP 6A § 6A:5

#### NORTHWEST TERRITORIES

Expert evidence provisions, APP 6A § 6A:6

#### **NOVA SCOTIA**

Expert evidence provisions, APP 6A § 6A:7

#### PRIVILEGE—Cont'd **ONTARIO** Case-by-case privilege—Cont'd Expert evidence provisions, APP 6A § 6A:9 Wigmore criteria, application of, § 8:3 Rules Class privilege, § 8:2 see FAMILY LAW RULES Communications made during mar-(ONTARIO) OR FAMILY LAW RULES (ALBERTA) riage, § 1:2 Evidentiary onus re, § 8:12 **OPINION EVIDENCE** Litigation Experts, of, § 6:6 generally, § 8:9 to § 8:11 Party-retained experts, § 5:38 dominant vs. substantial purpose, Statutory provisions re § 8:10 see EVIDENCE ACTS, piercing, § 8:11 PROVINCIAL Policy reasons for, § 8:1 **ORDERS** Settlement communications Assessment order application of privilege to, § 8:13 confidentiality of under Family see EXPERT EVIDENCE Law Rules, § 8:13 Setting aside/varying, § 10:3 to "without prejudice," meaning of, § 10:11 § 8:13 Family Law Rules re, § 10:4 Solicitor-client "changing orders," meaning of, § 10:4 generally, § 8:4 to § 8:8 test, § 10:4 exceptions to, § 8:5 motions, § 2:15 inadvertent disclosure, discretion Rules of Civil Procedure provire preservation of privilege, sions re, § 10:3 § 8:8 Temporary orders, § 2:9 waiver of by implication, § 8:7 **PARTICULARS** inadvertent disclosure and, Generally, § 2:3 § 8:6, § 8:8 Ontario Cases re, § 0.4 **PLEADINGS** Family Law Rules re, § 2:2 **OUEBEC** Striking pleadings, § 2:16 Evidence in family law, § 13:1 et seq. PRINCE EDWARD ISLAND REPORTS Expert evidence provisions, APP 6A § 6A:9 See CHILDREN'S EVIDENCE: EVIDENCE ACTS. **PRIVILEGE** PROVINCIAL; MEDICAL See also EXCLUSIONARY REPORTS; EXPERT EVI-**ISSUES** DENCE; FORENSIC EVI-Generally, § 8:1 **DENCE** Case-by-case privilege **RULES** balancing principle, § 8:3 Ontario described, § 8:2 see FAMILY LAW RULES

family law cases, in, § 8:3

(ONTARIO) OR FAMILY

#### RULES—Cont'd SASKATCHEWAN—Cont'd Appeals and fresh evidence, APP Ontario-Cont'd LAW RULES (ALBERTA) 10A § 10A:1 et seq.—Cont'd Provincial, APP 6A § 6A:1 et seq. statutory provisions, APP 10A § 10A:2 to 10A:7 RULES OF COURT (ALBERTA) appealing decision in Child Conclusion. § 12:16 Protection Proceeding, Family law proceedings, general, APP 10A § 10A:4 § 12:3 to § 12:16 appealing decision made under actions commenced by originat-The Family Maintenance ing application, § 12:13 Act, 1997, APP 10A alternate dispute resolution, § 10A:5 § 12:9 appealing decision made under applications to vary, § 12:6 The Family Property Act, disclosure, § 12:8, § 12:12 **APP 10A § 10A:6** expert witnesses and Family Law appealing from Court of Practice Note "7," § 12:15 Queen's Bench, Family Division, APP 10A interim applications, § 12:6 § 10A:3 proceedings under Divorce Act, appealing from provincial § 12:4 court, APP 10A § 10A:2 proceedings under Family Law relevant provisions regarding Act, § 12:10 appeals in Court of proceedings under Matrimonial Appeal, APP 10A Act, § 12:4 § 10A:7 protection and restraining orders, Charter litigation, APP 14C § 12:14 § 14C:1 et seq. questioning, § 12:12 generally, APP 14C § 14C:1 response, § 12:5 burden of proof, APP 14C service, § 12:5 § 14C:4 to 14C:6 summary judgment, § 12:7, justifying the limitation, APP § 12:11 14C § 14C:5 Introduction, § 12:1 proving the breach, APP 14C Purpose, § 12:2 § 14C:4 remedy, APP 14C § 14C:6 SASKATCHEWAN evidence at first instance, APP Appeals and fresh evidence, APP 14C § 14C:3 10A § 10A:1 et seq. framework, APP 14C § 14C:2 adducing fresh evidence on standard of proof, APP 14C appeal, APP 10A § 10A:8 § 14C:4 to 14C:6 evidentiary issues in setting aside justifying the limitation, APP or varying an order, APP 10A § 10A:10 14C § 14C:5 rules, APP 10A § 10A:1 et proving the breach, APP 14C § 14C:4 seq. introduction, APP 10A § 10A:1 remedy, APP 14C § 14C:6

SASKATCHEWAN—Cont'd	SASKATCHEWAN—Cont'd
Child protection proceedings, APP	Expert evidence provisions, <b>APP</b>
11A § 11A:1 et seq.	6A § 6A:3
generally, <b>APP 11A § 11A:1</b>	Family rules, APP 2A § 2A:1 et
access, APP 11A § 11A:5	seq.
agreements, APP 11A § 11A:4	applications to appoint a mediator, APP 2A § 2A:25
applications	basics, APP 2A § 2A:7 to 2A:9
child in need of protection	answering a petition, APP 2A
bringing children to a place of safety	§ 2A:8
child in need of protection	pleadings and starting a case, APP 2A § 2A:7
consents, APP 11A § 11A:4	reply, <b>APP 2A § 2A:9</b>
evidence, APP 11A § 11A:6	child support, APP 2A § 2A:24
business proceedings, APP	custody and access, APP 2A
11A § 11A:9	§ 2A:23
children's statements, APP	disclosure, APP 2A § 2A:14 to
11A § 11A:7	2A:19
expert assessments, APP 11A § 11A:10	correcting and updating
ű .	disclosure, APP 2A
previous proceedings, APP 11A § 11A:8	§ 2A:19
hearings, <b>APP 11A § 11A:3</b>	failure to disclose, APP 2A § 2A:18
orders, <b>APP 11A § 11A:3</b>	financial statements and prop-
Electronic discovery, <b>APP 3A</b>	erty statements, <b>APP 2A</b>
Evidence act, APP 1A § 1A:1 et	§ 2A:14
seq.	notice to disclose, APP 2A
generally, APP 1A § 1A:1	§ 2A:16
business records, APP 1A § 1A:7	notice to reply to written questions, <b>APP 2A § 2A:17</b>
communications during marriage, privilege, <b>APP 1A § 1A:2</b>	when statements not required, APP 2A § 2A:15
effect of apology on liability,	evidence, <b>APP 2A § 2A:12</b>
APP 1A § 1A:5	evidence, ATT 2A § 2A.12 evidence from non-parties, APP
electronic records, APP 1A	2A § 2A:20, 2A:21
§ 1A:6	disclosure by non-parties, APP
expert witnesses, limitation on	2A § 2A:20
number, App. 2A	discover of non-parties, APP
medical reports, APP 1A § 1A:4	2A § 2A:21
Exclusionary issues, APP 8A	informality of family law
§ 8A:1	procedures, APP 2A § 2A:2
introduction, APP 8A § 8A:2	interim relief, APP 2A § 2A:10,
pre-trial conference, <b>APP 8A</b>	2A:11
§ 8A:3	affidavit evidence, APP 2A § 2A:11
solicitor-client privilege, APP 8A § 8A:2	% 2A:11 motions, APP 2A § 2A:10
8 0A:4	modons, AFF 2A § 2A:10

# SASKATCHEWAN—Cont'd Family rules, APP 2A § 2A:1 et seq.—Cont'd introduction, APP 2A § 2A:1 medical reports, APP 2A § 2A:26 privacy and confidentiality, APP 2A § 2A:3 to 2A:5 adultery, APP 2A § 2A:6 financial document confidentiality, APP 2A § 2A:5 private hearings, APP 2A § 2A:3 restricted access to court records, APP 2A § 2A:4 uncontested family law proceedings, APP 2A § 2A:13 variation of orders, APP 2A § 2A:22 Forensic evidence, APP 6B § 6B:1 et seq. affidavit evidence, APP 6B § 6B:2 appraisal reports, APP 6B § 6B:3 expert reports, APP 6B § 6B:1 Hearsay and exceptions to hearsay, APP 9A § 9A:1 et seq. children's evidence, APP 9A § 9A:4 children's preferences, APP 9A § 9A:4 exceptions, APP 9A § 9A:6 to 9A:11 business records, APP 9A § 9A:6 certificate regarding convictions, APP 9A § 9A:10 hearsay evidence in affidavits, APP 9A § 9A:1 et seq. medical report, APP 9A § 9A:9 proof of adultery, APP 9A § 9A:10 public records, APP 9A § 9A:1 et seq.

# SASKATCHEWAN—Cont'd Hearsay and exceptions to hearsay, APP 9A § 9A:1 et seq. —Cont'd hearsay evidence, APP 9A § 9A:3 introduction, APP 9A § 9A:1 principles to consider regarding hearsay evidence, APP 9A § 9A:2 statements made by deceased person, APP 9A § 9A:5 statements made out-of-court, APP 9A § 9A:12 **SETTLEMENT** COMMUNICATIONS Generally, § 8:13 SETTLEMENT CONFERENCES Rules re, § 2:4 Settlement conference brief, APP 6A § 6A:7 **SETTLEMENTS** Assessment and, § 5:30 Court-appointed assessors, and, § 5:12, § 5:30 Information for, § 5:25 SOCIAL SCIENCE KNOWLEDGE See EXPERT EVIDENCE **SOLICITOR-CLIENT PRIVILEGE** See PRIVILEGE **TEXT MESSAGES** Admissions, § 9:8 Children's evidence, § 4:30 THIRD PARTIES Child's evidence through see CHILDREN'S EVIDENCE Personal diaries/cards of third par-

ties, admissibility, § 8:18

Ouestioning, § 2:8, § 7:9

#### TRIALS, FAMILY LAW

See also FAMILY LAW RULES (ONTARIO) OR FAMILY LAW RULES (ALBERTA)

Generally, § 7:1

Brief of authorities, preparation, § 7:12

Children's evidence

see CHILDREN'S EVIDENCE

Document preparation, elements of, § 7:2

Evidence, obtaining, APP 7A, § 7:3 to § 7:12

cross-examination preparation, § 7:11

expert reports, § 7:7

joint exhibit books, § 7:8

motion for further and better affidavit of documents, § 7:5

questioning, § 7:3

questioning third parties under FLR, § 7:9

request to admit, § 7:4

witness/party preparation, § 7:10

Expert evidence at

see EXPERT EVIDENCE

Planning, § 7:2

Provincial provisions, **APP 6A** § **6A:1** et seq.

5 offit et seq.

Trial, presentation at, APP 7A, § 7:13 to § 7:16

adverse inferences, establishing, § 7:15

#### TRIALS, FAMILY LAW-Cont'd

Trial, presentation at, APP 7A, § 7:13 to § 7:16—Cont'd memos of argument, § 7:16 objections to documents/oral evidence, § 7:14 opening, § 7:13

#### VIDEO AND AUDIOTAPE

Admissibility, § 8:15 Children's evidence, § 4:30 Hearsay related through, § 4:27

#### **VOIR DIRE**

Generally, § 4:28, § 4:29

#### YEAR IN REVIEW

2022, § 0:1 to § 0:4

Family Decisions

Ontario Court of Appeal, § 0:3 Ontario Decision, Waiver of

Privilege, § **0:4**Supreme Court of Canada,

§ 0:2

2023, § 0:50:1 to § 0:50:21

Family Decisions

Appellate Courts, § 0.50:3

Supreme Court of Canada, § 0.50:2

#### YUKON

Expert evidence provisions, APP 6A § 6A:13