# Index

ACCESS Appeals parenting time, § 6:26 practice and procedure, § 6:22 Change in circumstances, § 5:253 to § 5:264 Contempt, APP D § D:18 COVID-19 concerns, APPA § A:2 Enforcement, APP D § D:17 Mobility, § 5:250 Parenting order, definition, § 1:5 Parenting time definition, § 5:247 Variation of orders generally, § 5:247, § 5:253 interim, § 5:251, § 5:252 parenting time, § 5:265 relocation, § 5:255 to § 5:259 **ADULTERY** Generally, § 4:30 to § 4:40 AGE OF MAJORITY, DEFINITION Generally, § 1:5 ALBERTA PRACTICE Generally, APP F1 § F:1 Adjournment, APP F1 § F:8 Appeals, APP F1 § F:16 Commencement of proceedings, APP F1 § F:4 Corollary relief, APP F1 § F:13 Costs, APP F1 § F:13 Divorce without an appearance, APP F1 § F:10 Joinder of Claims, APP F1 § F:2 Notice to disclose, APP F1 § F:5 Parenting after separation seminar, APP F1 § F:6 Participation by Her Majesty's Proctor, **APP F1 § F:7** Parties to proceedings, APP F1 § F:3 Pre-trial conferences, APP F1 § F:9 Security for costs, APP F1 § F:15 Summary judgment, APP F1 § F:11 Trials, APP F1 § F:12

### ALIMONY

See income tax aspects of income and property sharing

#### APPEALS

Generally, § 6:1 to § 6:3 Costs, § 6:23 Effective date of order, § 6:21 Failure to make full financial disclosure. § 6:24 Fresh evidence, § 6:14 Interim custody, § 6:18 Interim orders, from, § 6:16 Interim support, § 6:17 Jurisdiction, § 6:4 Lack of procedural fairness, § 6:13 Parenting (previously Custody), § 6:25 Parenting time, § 6:26 Practice and procedure, § 6:22 Standard of review for errors of law, § 6:5 to § 6:12 Stay of appeal, § 6:20 Stay pending appeal, § 6:19 Support, § 6:27 Timeframe for appeal, § 6:15

APPELLATE COURT Generally, § 1:6

APPLICABLE GUIDELINES, DEFINITION Generally, § 1:5

APPLICATION OF STATUTES Spousal support, to, § 9:2, § 9:4

#### ATTRIBUTION See income tax aspects of income and property sharing

AWARDS

Fluctuating, § 15:7 Indexed, § 15:8 Interest on support awards, § 15:13 Maintaining benefits, § 15:14 Matrimonial home, § 15:9 Nominal, § 17:12

#### AWARDS—Cont'd

Other, § 15:16 Provisional, § 15:15 Remarriage or common-law marriage, § 15:10 Support orders binding against estates, § 15:11

#### **BEST INTERESTS OF CHILD**

Generally, § 5:101
COVID-19 concerns, APP A § A:2
Determining using assessors and assessments, § 5:102
Orders, parenting or contact, § 5:89
Parenting time, as much as is consistent, § 5:99
Past Conduct of Parent, § 5:98

# BRITISH COLUMBIA PRACTICE

Generally, **APP F2 § F:1** Commencement of proceedings, **APP F2 § F:5** Costs, **APP F2 § F:11** Financial information, **APP F2 § F:6** Joinder of claims, **APP F2 § F:2** Jurisdiction, **APP F2 § F:3** Parties to proceedings, **APP F2 § F:4** Provisional orders, **APP F2 § F:4** Provisional orders, **APP F2 § F:4** Undefended divorce, **APP F2 § F:8** 

#### CAPITAL PROPERTY, CAPITAL GAINS EXEMPTION

See income tax aspects of income and property sharing

#### CHANGE IN CIRCUMSTANCES

Child support generally, § 5:222 to § 5:227 amount based on Table, § 5:220 amount not based on Table, § 5:221 children, related to, § 5:226 payee, related to, § 5:233 to § 5:235 payor, related to, § 5:228 to § 5:232 retroactive variation of order, § 5:236 to § 5:238 Custody generally, § 5:247, § 5:253, § 5:256 children moving, § 5:255, § 5:258 to § 5:259 child's wishes, § 5:254 conduct affecting children, § 5:262, § 5:266

## CHANGE IN CIRCUMSTANCES

--Cont'd Custody--Cont'd denial of access, § 5:263 parents' health affecting children, § 5:265 practice, § 5:264 remarriage of non-custodial parent, § 5:260 Spousal support, see variation and review

#### CHARTER ISSUES IN SUPPORT ENFORCEMENT Generally, APP D § D:20

#### CHILD OF THE MARRIAGE

Generally, § 1:7 Adoption, § 1:7 Age of child over the age of majority, § 1:9 under the age of majority, § 1:8 Case Law, § 1:7 Definition, § 1:4, § 1:5 "Divorce proceeding," § 1:34 "In the place of a parent," standing determination of whether or not spouse, § 1:26 to § 1:29 support beyond termination date, § 1:31 termination of parent-child relationship, § 1:30 Parent-child relationship, § 1:23 child is not a "child of the relationship," § 1:24 "Spouse" definition, § 1:35 Support for transitional period, § 1:25 "Variation order," definition, § 1:32 Withdrawal from parental charge factors assessed generally, § 1:10 unable to withdraw education generally, § 1:13, § 1:14 child not a "child of the marriage," § 1:15 child's obligation to contribute to education, § 1:16 continuing education after interruption, § 1:19 full-time education and earning income, § 1:17

## CHILD OF THE MARRIAGE—Cont'd Withdrawal from parental charge factors assessed-Cont'd unable to withdraw education-Cont'd illness or disability, § 1:11 child not a child of the marriage, § 1:12 lack of available employment, § 1:21 miscellaneous, § 1:22 part-time education, § 1:18 proof of continuing education, § 1:20 CHILD SUPPORT Generally, § 5:6 to § 5:7 Adoption orders, § 5:60 Calculation, provincial child support service, § 7:43 to § 7:44 Child is age of majority or over, § 5:65 Child's own income, § 5:55 Child's receipt of social assistance, § 5:56 Commencement date for retroactive. § 5:36 Constitutional issues, § 5:13 to § 5:15 Costs, § 5:61 Duty to disclose financial circumstances, § 5:59 Enforcement generally, APP D § D:1 arrears, suspension of support, APP D § D:9 bankruptcy of payor spouse, APP D § D:7 Charter issues, APP D § D:20 child support orders. APP D § D:8 committal, APP D § D:19 contempt access orders, APP D § D:18 support orders, APP D § D:11 custody and access orders, APP D § D:16 execution, stay of, APP D § D:15 execution and charging orders, APP D § D:14 Family Order and Agreements Enforcement Assistance Act, APP D § D:2, APP D § D:21 garnishment, APP D § D:13 interest on support awards, APP D § D:10 jurisdictional issues, APP D § D:3 reciprocal, APP D § D:12

CHILD SUPPORT—Cont'd Enforcement-Cont'd registration against land, APP D § D:15 regulations, APPE § E:1 to APPE § E:3 spousal support orders generally, APP D § D:4 one year rule, APP D § D:5 Entitlement, § 5:18 Evidentiary issues, § 5:17 Financial issues, APPA § A:2 Income adjustment Schedule, APP B § B:18 Interim support generally, § 5:20 in accordance with the Guidelines, § 5:21 Jurisdiction Charter of Rights and Freedoms, § 5:14 child support orders, § 5:11 child support proceedings, § 5:9 provincial legislation and Divorce Act, § 5:12 provincial statutes, § 5:15 variation proceedings, § 5:10 No support due to child's rejection of parent, § 5:53 Paramountcy, § 5:13 Parties must be "former" married spouses, § 5:16 Payment death of payor or payee, § 5:57 duration of orders, § 5:48 lump sum, § 5:39 to § 5:46 orders to secure payment, § 5:47 set-off, § 5:51 third-party payments, § 5:50 to child, § 5:49 Priority over other obligations, § 5:19 Prior orders, judgements and written agreements, § 5:52 Recalculation, provincial child support service, § 7:45 Reconciliation attempt, effect of, § 5:58 Retroactive payments, see retroactive child support Shared parenting time, § 5:75 Special or extraordinary expenses, § 5:69 Split parenting time, § 5:74 Spousal support, relationship with, § 17:6

#### CHILD SUPPORT—Cont'd

Table amount, § 5:66 Tax consequences of agreement or order agreements or orders made before May 1997, § 5:80 commencement date, § 5:81 deduction/inclusion rules, § 5:76, § 5:77 elimination of rule for child support, § 5:78 determining amount to be included in income, § 5:79 effect of formula, § 5:85 prior payments where no variation, § 5:82 prior payments with variation, § 5:83 spouse exempt from paying federal or provincial income tax, § 5:86 third-party payments, § 5:84 Variation of order or calculation of amount, § 7:64 Where guidelines provide otherwise, § 5:70 Without formula crossover between the two formulas, § 20:4 duration, § 20:3 CHILD SUPPORT FORMULA, DETERMINE SPOUSAL SUPPORT WITHOUT Crossover between two formulas, § 20:4 Duration, § 20:3

Ouantum, § 20:2

#### CHILD SUPPORT FORMULA, DETERMINING SPOUSAL SUPPORT WITH Generally, § 21:1

Adult children, § 21:8 Basic Formula duration, § 21:3 quantum, § 21:2 Crossover between two formulas, § 21:9 Custodial payor, § 21:7 Shared parenting time, § 21:4 Split parenting time, § 21:5 Stepchildren, § 21:6

CHILD SUPPORT GUIDELINES, EXCEPTIONS UNDER FEDERAL AND PROVINCIAL Albert, APP K § K:1 to APP K § K:7

CHILD SUPPORT GUIDELINES. **EXCEPTIONS UNDER FEDERAL** AND PROVINCIAL—Cont'd British Columbia, APP K § K:8 to APP K § K:16 Manitoba, APP K § K:17 to APP K § K:23 New Brunswick, APP K § K:24 to APP K § K:30 Newfoundland and Labrador, APP K § K:31 to APP K § K:37 Northwest Territories, APP K § K:38 to APP K § K:44 Nova Scotia, APP K § K:45 to APP K § K:51 Nunavut, APP K § K:52 to APP K § K:58 Ontario, APP K § K:59 to APP K § K:67 Prince Edward Island, APP K § K:68 to APP K § K:74 Quebec, APP K § K:75 to APP K § K:81 Saskatchewan, APP K § K:82 to APP K § K:88 Yukon, APP K § K:89 to APP K § K:95 CHILD TAX BENEFITS See income tax aspects of income and property sharing COLLUSION Generally, § 4:70 Definition, § 4:75 **COMPARISON OF HOUSEHOLD** STANDARDS OF LIVING TEST Generally, APP B § B:17 **COMPETENT AUTHORITY, DEFINITION** Generally, § 1:5

CONDONATION Generally, § 4:73

CONDUCT Generally, § 17:10

CONNIVANCE Generally, § 4:74

CONSTITUTIONAL ISSUES Federal power to grant maintenance under Divorce Act, § 10:4 Paramountcy federal legislation, § 10:4

## **CONSTITUTIONAL ISSUES—Cont'd** Paramountcy—Cont'd operational conflict theory, § 10:4 Support discretion to proceed under Divorce Act or provincial legislation, § 10:4 under provincial statutes, § 10:4 **CONTACT ORDER** Generally, § 5:121 Best interests of the child, § 5:100 Definition, § 1:5 CONTEMPT **CRUELTY** Access orders, APP D § D:18 Spousal and child support, APP D § D:11 **COROLLARY RELIEF** See also child support, custody, access Generally, § 5:294, § 9:3 Application of statutes, § 9:4 Confirmation proceedings, § 5:282 Corollary relief proceeding, definition, § 1:5 Grounds for entitlement to spousal support, § 9:5 Jurisdiction, § 10:1 Legal effect throughout Canada Right to, § 9:3 Severing from divorce, § 9:3 time limits, § 9:3 Parenting orders, § 5:107 Section 15 of Divorce Act, § 9:1 Variation of order, § 5:292 **COROLLARY RELIEF PROCEEDINGS** Application of statutes, § 9:4 Definition, § 1:5 Jurisdiction, § 10:1 COSTS Generally, APPA § A:2 Appeals, § 6:23 Corollary relief, § 5:61 Disclosure, § 17:4 Parenting time and relocation, relating to, § 5:210

## COURT

Duties conflicting orders and civil protection orders, § 3:16

COURT-Cont'd Duties-Cont'd reconciliation, § 4:61 to § 4:67 COVID-19 Case index generally, APPA § A:2 exclusive possession of matrimonial home, APPA § A:2 parenting, APPA § A:2 parenting time and wrongful removal/ retention, APPA § A:2 Court processes, APPA § A:1

Generally, § 4:41, § 4:43 to § 4:57 Continued cohabitation. § 4:46 Definition, § 4:42 Examples, § 4:47 Intolerability, § 4:45 Mental cruelty: humiliation, harassment, criticism, § 4:48 Mental illness, § 4:49 Mutual cruelty, § 4:50 Neglect and taciturnity, § 4:51 Philandering, § 4:52 Physical violence, § 4:53 Provocation, § 4:54 Refusal to have children, § 4:55 Relevant time, § 4:44 Religious intolerance, § 4:56 Sexual practices/issues, § 4:57 Subjective test for, § 4:43

#### **CUSTODY**

See also custody and access Term repealed 2021, § 1:5

#### CUSTODY AND ACCESS

See also best interests of child Appeals parenting (previously custody), § 6:25 parenting time, § 6:26 Child's physical, emotional and psychological safety and well-being, § 5:95 COVID-19 concerns, APPA § A:2 Family violence impact of, § 5:94, § 5:96 Orders enforcement, APP D § D:17 variation, § 5:242 to § 5:266

CANADIAN DIVORCE LAW AND PRACTICE, SECOND EDITION

#### CUSTODY AND ACCESS—Cont'd

Parenting time, best interests of child, § 5:99 Past conduct, § 5:98 Variation of orders change in circumstances, § 5:253 to § 5:263 interim parenting order, § 5:251 interim variation of final parenting order, § 5:252 joint decision-making, § 5:249 parenting and consent orders, § 5:247 to § 5:248 parenting time, § 5:265 practice, § 5:264 review of parenting orders, § 5:266 sole to joint decision-making, from, § 5:250

## CUSTODY ORDER Term repealed 2021, § 1:5

DECISION-MAKING RESPONSIBILITY Allocation, § 5:118 Definition, § 1:5 Entitlement to information, § 5:119

#### **DEFINITE PERIOD, SUPPORT FOR** Generally, § 15:3

DELAY IN BRINGING APPLICATION See also spousal support-interim Generally, § 15:6

#### **DESIGNATING BENEFICIARY** Generally, § 15:12

DESK DIVORCES Generally, § 7:38

#### DETERMINATION OF INCOME Generally, § 16:1

Miscellaneous, § 16:6 Self-employment income and various forms of non-employment income, § 16:4 Use of CSG in SSAG calculations, § 16:3 Without child support and with child support formulas, § 16:5

## DISCLOSURE

Generally, § 17:1, § 17:2 Practice and procedure, § 17:5 Sanctions, penalties and costs, § 17:4

## DISCLOSURE—Cont'd Third parties, § 17:3

DIVORCE, BARS TO Collusion, § 4:70, § 4:75 Condonation, § 4:73 Connivance, § 4:72 Doctrine of revival, § 4:74 Duty of court, § 4:68 Reasonable arrangements for support of children, § 4:71

## **DIVORCE, EFFECTIVE DATE**

Generally, § 4:76 to § 4:79 Conclusive proof, § 4:84 Earlier date notice of appeal, § 4:82, § 4:83 special circumstances, § 4:80 undertaking not to appeal, § 4:81 Reconciliation, § 4:85

## **DIVORCE, GROUNDS FOR**

Capacity to divorce, § 4:13 Counter-petitions, § 4:14 Marriages of convenience, § 4:12 Marriage validity, § 4:8 to § 4:11

#### DIVORCE, RECOGNITION OF FOREIGN, 7

Generally, § 7:5 to § 7:7 Common law rules, § 7:11, § 7:12 Fraud, § 7:14 Presumption of validity, § 7:8, § 7:9 Public policy, contrary to, § 7:15 Validity, preclusion from, § 7:16 Violation of natural justice, § 7:13 Wife's domicile, § 7:10

## DIVORCE PROCEEDING, DEFINITION Generally, § 1:5

DIVORCE—SECTION 25 RULES Generally, § 7:35 to § 7:37 Desk divorces, § 7:38 Discovery, § 7:41 Publication bans, § 7:42 Representation at proceedings, § 7:39 Summary judgment, § 7:40

#### **DOMESTIC CONTRACTS**

Interim orders and, see spousal support Jurisdiction to override, see variation and review

#### DRINKING

Generally, **§ 4:47** 

## DRUG ADDICTION Generally, § 4:47

#### ECONOMIC IMPACT OF MARRIAGE OR ITS BREAKDOWN

Advantages or disadvantages arising from the marriage or its breakdown, § 14:2

Hardship of the spouses arising from the breakdown of the marriage, **§ 14:4** 

## ECONOMIC SELF-SUFFICIENCY

Objective of spousal support, § 14:2 Promotion of, § 14:5

**ENFORCEMENT** Generally, APP D § D:1 Arrears, suspension of support, APP D § D:9 Bankruptcy of payor spouse, APP D § D:7 Charter issues, APP D § D:20 Child support orders, APP D § D:8 Committal, APP D § D:19 Contempt access orders, APP D § D:18 support orders, APP D § D:11 Custody and access orders, APP D § D:16 Execution, stay of, APP D § D:15 Execution and charging orders, APP D § D:14 Family Order and Agreements Enforcement Assistance Act, APP D § D:2, APP D § D:21 Garnishment, APP D § D:13 Interest on support awards, APP D § D:10 Jurisdictional issues, APP D § D:3 Reciprocal. APP D § D:12 Registration against land, APP D § D:15 Regulations, APP E § E:1 to APP E § E:3 Spousal support orders generally, APP D § D:4 inter-spousal agreements iurisdiction of court to enforce. APP D § D:6 one year rule, APP D § D:5

ENTITLEMENT Generally, § 19:1

#### ENTITLEMENT—Cont'd

Application of spousal support advisory guidelines challenged agreements, role of SSAG in, § 19:6 effect of prior agreement on SSAG, § 19:5 income sharing, § 19:3 interim orders, § 19:7 SSAG—advisory only, used to determine quantum and duration, § 19:2 without and with child formula, § 19:4 Income, § 19:8

ESTATES, SPOUSAL SUPPORT ORDER BINDING AGAINST Generally, § 15:11

EVIDENCE, PROVINCIAL LAWS OF Generally, § 7:20 to § 7:22 Admissibility, § 7:23 Expert, § 7:25 Hearsay, § 7:24 Proof of marriage, § 7:29 Res judicata, § 7:27 Solicitor-client privilege, § 7:26 Striking pleadings, § 7:28

FACTORS IN MAKING SPOUSAL SUPPORT ORDER See spousal support

FAMILY DISPUTE RESOLUTION PROCESS, DEFINITION Generally, § 1:5

FAMILY INFORMATION SESSION (FIS) IN TORONTO Generally, APP F5 § F5:4

FAMILY JUSTICE SERVICES, DEFINITION Generally, § 1:5

FAMILY MEMBER, DEFINITION Generally, § 1:5

FAMILY ORDER AND AGREEMENTS ENFORCEMENT AND ASSISTANCE ACT Generally, APP D § D:2

FAMILY VIOLENCE, DEFINITION Generally, § 1:5

## FEDERAL CHILD SUPPORT GUIDELINES

Generally, APP 16A, § 5:63
Guidelines, APP B § B:2
"Provide otherwise," where guidelines, § 5:70
Section 3—presumptive rule, § 5:65
Section 4—payor income more than \$150,000, § 5:71
Section 5—payor standing in place of parent, § 5:72
Section 8—split parenting time, § 5:74
Section 9—shared parenting time, § 5:75
Special or extraordinary expenses, § 5:69, § 5:73
Table amount, § 5:66

2017 update, § 5:67

## FEDERAL CHILD SUPPORT TABLES Generally, APP B § B:3 to B:16

#### FLUCTUATING AWARDS OF SPOUSAL SUPPORT Generally, § 15:7

FOREIGN DIVORCE See divorce, recognition of foreign

#### FOREIGN ORDER THAT VARIES PARENTING OR CONTACT ORDER, RECOGNITION OF Generally, § 7:19

## FORMER SPOUSES Generally, § 11:1

#### FORMS

Alberta, **APP H1** British Columbia, **APP H2** Manitoba, **APP H3** New Brunswick, **APP H4** Newfoundland and Labrador, **APP H5** Northwest Territories, **APP H6** Nova Scotia Civil Procedure Rules, 2009, **APP H7** Nunavut, **APP H8** Ontario, **APP H9** Prince Edward Island, **APP H10** Quebec, **APP H11** Saskatchewan, **APP H12** Yukon, **APP H13** 

#### FUNCTIONS PERFORMED BY EACH SPOUSE DURING COHABITATION Generally, § 13:8

#### GENERIC OFFER TO SETTLE Generally, APPA § A:3

### "HABITUALLY RESIDENT," DEFINITION Generally, § 2:4

INCOME TAX ACT Amounts to be included in income, APP C

INCOME TAX ASPECTS OF INCOME

## AND PROPERTY SHARING Generally, APP J § J:1, APP J § J:19 Alimony and maintenance, APP J § J:2 Attribution, APP J § J:9 Case study, APP J § J:25 to APP J § J:30 Commencement day of agreement, § 8:1 Domestic contract or shareholders' agreement, APP J § J:15 Federal budget February 25, 1992, APP J § J:20 implications to family law capital gains exemption, APP J § J:24 child care deduction, APP J § J:23 child tax benefits, APP J § J:22 common-law spouse, APP J § J:21 Legal fees, deductibility of, APP J § J:17 Money borrowed to finance lump sum or maintenance payments, interest on, **APP J § J:18** Payments made prior to an order or written agreement, APP J § J:4 Principal residence consideration exemption, APP J § J:12 family unit, APP J § J:13 qualifying property, APP J § J:11

R.R.S.P.'s, **APP J § J:10** Taxation of dividends, **APP J § J:16** Third party payments, **APP J § J:3** Transfer of property generally, **APP J § J:5** capital gains exemption, **APP J § J:7** capital property, **APP J § J:6** 

noncapital property, APP J § J:8

## INCOME TAX ASPECTS OF INCOME AND PROPERTY SHARING —Cont'd Unanticipated joint and several tax liability, APP J § J:14 INCOME TAX CONSIDERATIONS,

CHILD SUPPORT See child support

INCOME TAX ISSUES Generally, § 17:11

**INDEFINITE PERIOD, SUPPORT FOR** Generally, § 15:4

**INDEXED AWARDS** Generally, § 15:8

INTEREST ON SUPPORT AWARD Generally, § 15:13

INTERIM CHILD SUPPORT Generally, § 5:20 In accordance with the Guidelines, § 5:21 Variation of order, § 5:20, § 5:21, § 5:251

**INTERIM ORDERS AND VARIATION** See variation and review

## INTERIM SUPPORT

Generally, § 12:1, § 12:3 Delay in application as a defence, § 12:7 Evidence and disclosure, § 12:5 Indefinite support, § 12:9 Jurisdiction to grant relief, § 12:2 Relationship to permanent support, § 12:6

#### **JURISDICTION**

Application for contact order, § 2:20, § 2:21 Child habitually resident outside of Canada, § 2:24 determine parenting orders or consent orders, § 2:27 Constitutional issues, § 10:4 Conversion of applications, § 5:278 Corollary relief proceedings, § 10:1 generally, § 2:8, § 2:10 jurisdiction to grant relief, § 2:9, § 2:11 severance of corollary relief, § 2:12 Divorce proceedings generally, § 2:1, § 2:3 concurrent applications, § 2:5 counter-petitions, § 2:6

Divorce proceedings-Cont'd other issues, § 2:7 Exercise of jurisdiction by judge, § 2:29 General, § 5:272 "Habitual resident," § 2:4 Proceedings between provinces/ designated jurisdictions, § 10:5 Removal or retention of child of marriage wrongful, § 2:23 Respondent, no action by, § 5:280 Support orders, to make, § 10:3 Transfer of proceedings where application for parenting order made, § 2:17 to § 2:18 Variation proceedings, § 2:12 to § 2:15, § 10:2

LEGAL ADVISOR Definition, § 1:5 Duties, § 3:14, § 4:58 to § 4:60

.JURISDICTION—Cont'd

LEGAL EFFECT OF DIVORCE THROUGHOUT CANADA Generally, § 4:86

LEGAL FEES, DEDUCTIBILITY OF See income tax aspects of income and property sharing

#### LENGTH OF RELATIONSHIP

Spousal support under Divorce Act and provincial statutes Alberta, APP L § L:1 to APP L § L:7 British Columbia, APP L § L:8 to APP L § L:32 Manitoba, APP L § L:33 to APP L § L:39 New Brunswick, APP L § L:40 to APP L § L:46 Newfoundland and Labrador, APP L § L:47 to APP L § L:53 Northwest Territories, APP L § L:54 to APPL §L:60 Nova Scotia, APP L § L:61 to APP L § L:67 Nunavut, APP L § L:68 to APP L §L:74 Ontario, APP L § L:75 to APP L § L:90 Prince Edward Island, APP L § L:91 to APPL §L:97

CANADIAN DIVORCE LAW AND PRACTICE, SECOND EDITION

#### LENGTH OF RELATIONSHIP—Cont'd

Spousal support under Divorce Act and provincial statutes—Cont'd Quebec, **APP L § L:98 to APP L § L:104** Saskatchewan, **APP L § L:105 to APP L § L:111** Yukon, **APP L § L:112 to APP L** 

# § L:118 LUMP SUM OR PERIODIC SPOUSAL

SUPPORT

See spousal support-method of payment

# LUMP SUM SPOUSAL SUPPORT

See spousal support-method of payment

## MAINTAINING BENEFITS Generally, § 15:14

## MARRIAGE BREAKDOWN Generally, § 4:3 Adultery and cruelty, § 4:5

Adultery and cruelty, § 4:5 Living separate and apart, § 4:4 Reconciliation, § 4:6

## MARRIAGE DISSOLVED BY DEATH Generally, § 4:90

MARRIAGE OF CONVENIENCE Generally, § 4:12

#### MATRIMONIAL HOME AWARD FOR SPOUSAL SUPPORT Generally, § 15:9

#### MEANS AND NEEDS

Party from whom support is sought, of, § 13:1 Party seeking support, of, § 13:6

# METHOD OF PAYMENT OF SPOUSAL SUPPORT

See spousal support

## MOBILITY OF PARENTS See custody and access

NEGLECT Generally, § 4:51

## NESTING AWARDS FOR SPOUSAL SUPPORT Generally, § 17:12

#### NORTHWEST TERRITORIES PRACTICE

Generally, App F3 § F3:1

## NOVA SCOTIA PRACTICE

Generally, App F4 § F4:1 Answer and counter-petition, App F4 § F4:6 Application to vary, rescind or suspend, App F4 § F4:11 Commencement of Proceedings, App F4 § F4:5 Corollary relief orders, enforcing, App F4

§ F4:12
Costs and suit money, App F4 § F4:15
Failure to proceed, App F4 § F4:10
Financial statements, App F4 § F4:7
Joinder of Causes, App F4 § F4:2
Jurisdiction, App F4 § F4:3
Notice of hearing, App F4 § F4:9
Parties to proceedings, App F4 § F4:4
Pre-trial conference, App F4 § F4:6
Provisional orders, App F4 § F4:13
Undefended proceeding, App F4 § F4:6

## OBJECTIVES OF SPOUSAL SUPPORT ORDER

See spousal support

OFFER TO SETTLE, GENERIC FORM Generally, APPA § A:3

## ONTARIO PRACTICE Generally, App F5 § F4:1 Costs, App F5 § F5:6

Divorce Procedure in Superior Court of Justice, App F5 § F5:2 Divorce Procedure under Family Law Rules, App F5 § F5:3

Family Information Session (FIS) in Toronto, App F5 § F5:4
Uncontested divorces in Superior Court of Justice, Toronto, App F5 § F5:5

ORDER ASSIGNEE, DEFINITION Generally, § 1:5

## PARAMOUNTCY Generally, § 10:4

## **PARENTING ORDER** See also custody and access; variation of

custody and access orders

## PARENTING ORDER—Cont'd Application by person other than spouse, § 5:110 Contents, § 5:111 Corollary relief, § 5:107 Definition, § 1:5 Family dispute resolution process, § 5:113 General, § 5:108 Interim orders, § 5:109 Prohibition on removal of child, § 5:116 Relocation, § 5:114 Schedule, § 5:117 Supervision, § 5:115 Terms and conditions, § 5:112

#### **PARENTING PLANS**

See also best interests of child; custody and access Generally, § 5:123

#### PARENTING TIME

Definition, § 1:5 Person deemed to have, § 8:20 Schedule, § 5:117

#### PARTIES

Spouses or former spouses, § 11:1

## PARTIES TO A PROCEEDING

Duties best interests of child, § 3:2 certification, § 3:12 complete, accurate and up-to-date information, § 3:8 comply with orders, § 3:10 family dispute resolution process, § 3:6 protection of children from conflict, § 3:4

## PAYMENT TO THIRD PARTIES, REQUIRED UNDER ORDER FOR SPOUSAL SUPPORT

Generally, § 15:10

## PAYOR'S INCOME, POST-SEPARATION INCREASES IN Generally, § 13:3 to § 13:5

PERIODIC SUPPORT Awards in addition to, § 15:22

#### PHILANDERING

Generally, § 4:52

PHYSICAL VIOLENCE Generally, § 4:53 **POST-SEPARATION INCREASES IN PAYOR'S INCOME** Generally, § 13:3 to § 13:5 PRACTICE Alberta generally, APP F1 § F1:1 adjournments, APP F1 § F1:8 appeals, APP F1 § F1:16 commencement of proceedings, APP F1 § F1:4 corollary relief. APP F1 § F1:13 costs, APP F1 § F1:14 divorce without an appearance, APP F1 § F1:10 Her Majesty's Proctor, participation of, APP F1 § F1:7 joinder of claims, APP F1 § F1:2 notice to disclose, APP F1 § F1:5 parenting after separation seminar. APP F1 § F1:6 parties to proceedings, APP F1 § F1:3 pre-trial conferences, APP F1 § F1:9 security for costs, APP F1 § F1:15 summary judgment, APP F1 § F1:11 trials, APP F1 § F1:12 British Columbia generally, APP F2 § F2:1 commencement of proceedings, APP F2 § F2:5 costs, APP F2 § F2:11 enforcement of orders, APP F2 § F2:9 Financial Information, APP F2 § F2:6 joinder of claims, APP F2 § F2:2 iurisdiction. APP F2 § F2:3 parties to proceedings, APP F2 § F2:4 provisional orders, APP F2 § F2:10 summary judgment, APP F2 § F2:8 undefended divorce, APP F2 § F2:7 Nova Scotia generally, APP F4 § F4:1 answer and counter-petition, APP F4 § F4:6 application to vary, rescind or suspend, APP F4 § F4:12 commencement of proceedings, APP F4 § F4:5 costs and suit money, APP F4 § F4:15

**PRACTICE**—Cont'd Nova Scotia—Cont'd enforcing corollary relief orders, APP F4 § F4:13 failure to proceed, APP F4 § F4:11 financial statements, APP F4 § F4:7 joinder of causes, APP F4 § F4:2 jurisdiction, APP F4 § F4:3 notice of hearing, APP F4 § F4:9 parties to proceedings, APP F4 § F4:4 pre-trial conference, APP F4 § F4:8 provisional orders, APP F4 § F4:14 undefended proceeding, APP F4 § F4:10 Ontario generally, APP F5 § F5:1 costs, APP F5 § F5:6 Family Information Session (FIS), Toronto, APP F5 § F5:4 procedure Family Law Rules, APP F5 § F5:3 Superior Court of Justice, APP F5 § F5:2 uncontested divorces, APP F5 § F5:5 Ouebec costs, APP F6 § F6:1 PRECEDENTS General, APP I § I:1 to I:11 Federal child support guidelines checklist, **APPI § I:32** Uncontested divorce, APP I § I:12 to I:31 PRINCIPAL RESIDENCE See income tax aspects of income and

See income tax aspects of income and property sharing

## PRIOR ORDERS, JUDGEMENTS AND WRITTEN AGREEMENTS, EFFECT OF

Child's receipt of income or benefits8213child's own income, § 5:55

Child's receipt of social assistance/ income from other sources, § 5:56 Child's repudiation of parent-child relationship

child's rejection of parent—no support, § 5:53 child's rejection of parent—support granted, § 5:54

Child support, effect on, § 5:52

PRIVILEGE, SELF-INCRIMINATION IN ADULTERY CASES Generally, § 4:39

PROCEDURAL ISSUES Generally, APPA § A:2

PROPERTY AWARDS Effects of, § 17:8 pensions and spousal support, § 17:9

PROVINCIAL CHILD SUPPORT SERVICE, DEFINITION Generally, § 1:5

PROVISIONAL AWARDS Generally, § 15:15

PROVISIONAL AWARDS OF SPOUSAL SUPPORT Generally, § 15:15

PROVOCATION Generally, § 4:54

QUEBEC PRACTICE Costs, APP F6 § F6:1

RECONCILIATION Communication, § 4:67 Duties of court, § 4:61 to § 4:63 One spouse seeking, § 4:64 Procedure for determining possibility, § 4:65 Resumption of proceedings, § 4:67

RELIGIOUS INTOLERANCE Generally, § 4:56

RELOCATION Generally, § 5:204.50 Definition, § 1:5 Motion, § 5:211.50 Orders, § 5:214

REMARRIAGE, REMOVAL OF BARRIERS TO RELIGIOUS Generally, § 7:1 to § 7:3

REMARRIAGE AND ORDER FOR SPOUSAL SUPPORT Generally, § 15:10

REMARRIAGE OR COMMON-LAW MARRIAGE, AWARDS Generally, § 15:10

#### **RETROACTIVE CHILD SUPPORT**

Generally, § 5:38 Commencement date, § 5:31 Factors considered circumstances of children, § 5:26, § 5:29 conduct of parent, § 5:26, § 5:28 delay, § 5:26, § 5:27 hardship award might cause, § 5:26, § 5:30 Guideline formulas or court's discretion, § 5:35 Jurisdiction under Divorce Act and provincial legislation, § 5:33 Limitation period, § 5:32 Meaning of retroactive, § 5:23 No order made, § 5:36 Objectives, § 5:25 Order made, § 5:36 Orders, availability of, § 5:24 Supreme Court of Canada, § 5:22

#### **RETROACTIVE SPOUSAL SUPPORT**

Generally, § 15:2, § 28:1 Interim period, for, § 28:2 Lump sum—other, § 28:5 Separation agreement set aside, § 28:4 Support considered but not ordered, § 28:5, § 28:6 Tax issues and lump sum, § 28:5, § 28:6 Variation applications, § 28:3

## RETROACTIVE VARIATION OF CHILD SUPPORT

Generally, § **5:236** See also retroactive child support

#### R.R.S.P.S

See income tax aspects of income and property sharing

## RULES

Alberta, **APP G1** British Columbia, **APP G2** Manitoba, **APP G3** New Brunswick, **APP G4** Newfoundland and Labrador, **APP G5** Northwest Territories, **APP G6** Nova Scotia, **APP G7** Nunavut, **APP G8** Ontario, **APP G9** Prince Edward Island, **APP G10**  RULES—Cont'd Quebec, APP G11 Saskatchewan, APP G12 Yukon, APP G13

#### SALE OF MATRIMONIAL HOME Generally, APPA § A:2

SEPARATE AND APART
Circumstances not amounting to marriage breakdown, § 4:27
Date of separation, § 4:18, § 4:19
Guidelines for determining, § 4:16
Intention, § 4:17
Reconciliation attempt, § 4:29
Separation compassionate hospital visits, § 4:22
mental health or long-term hospitalization, § 4:21
sexual intercourse during, § 4:28
temporary physical separations, § 4:20
Under same roof, § 4:23 to § 4:26

#### SEPARATION AGREEMENT

Cases decided before enactment of Federal Child Support Guidelines, § 5:245

Child support, § 5:244 Enforcement, jurisdiction of court in, APP D § D:6

Parenting or contact order, § 5:246

## SEXUAL PRACTICES Generally, § 4:57

## SPECIAL PROVISIONS IN S. 17(6.2) OF DIVORCE ACT

See variation of child support

#### SPECIFIED EVENT, SUPPORT UNTIL Generally, § 15:6

#### SPOUSAL SUPPORT

Appeals, § 6:27 Application of statutes, § 9:4 Constitutional issues, § 10:4 COVID-19 determinations, APPA § A:2 Delay in application as a defence, § 12:7 Enforcement bankruptcy of payor spouse, APP D § D:7 charter issues, APP D § D:20 contempt, APP D § D:11 garnishment, APP D § D:13 SPOUSAL SUPPORT—Cont'd Enforcement—Cont'd interest on awards. APP D § D:10 one year rule, APP D § D:5 orders, APP D § D:4 reciprocal, APP D § D:12 suspension of support awards, APP D § D:9 Factors generally, § 13:1 Functions performed by each spouse during cohabitation, § 13:8 length of relationship, § 13:7 means and needs of party from whom support sought, § 13:2 means and needs of party seeking support, § 13:6 order, agreement, or arrangement relating to support, § 13:9 post-separation increases in payor spouse's income increase in support granted, § 13:4 support not granted, § 13:5 time-limited support extended, § 13:4 Financial issues, APPA § A:2 Grounds for entitlement, § 9:5 In addition to periodic sums, § 15:22 Income tax issues, § 17:11 Indefinite, § 12:9 Interim generally, § 12:1 to § 12:3 delay in application as a defence, § 12:7 evidence and disclosure, § 12:5 Indefinite support, § 12:9 jurisdiction to grant relief, § 12:2 relationship to permanent support. § 12:6 Method of payment lump sum generally, § 15:17, § 15:19 calculations, § 15:23 granted, § 15:20 jurisdiction, § 15:18 periodic sums, in addition to, § 15:22 refusal of awards, § 15:21 Miscellaneous, § 15:25 Nominal awards, § 17:11

SPOUSAL SUPPORT—Cont'd Grounds for entitlement, § 9:5—Cont'd Objectives to order for generally, § 14:1 economic advantages or disadvantages arising from marriage or its breakdown, § 14:2 economic hardship of spouses arising from breakdown of marriage, **§ 14:4** financial consequences arising from the care of any child of the marriage, § 14:3 promotion of economic self-sufficiency, § 14:5 Obligation of payor's estate, as, § 15:26 Orders, § 7:65 to § 7:68 Parties, § 11:1 Pension amounts, § 17:9 Periodic support-payment secured against payor's property, § 15:17, § 15:18 Refusal of awards, § 15:21 Relationship between child support, § 17:7 Term-limited or indefinite order for support after termination of support order, § 15:5 support for an indefinite period, § 15:4 support for definite period, § 15:3 support until specified event, § 15:6 Terms and conditions for, § 15:2 "To secure or pay," § 15:24 Transfer of pension, § 17:9 SPOUSAL SUPPORT ADVISORY **GUIDELINES** Application, § 19:2 Calculation of income under, § 19:8 obtaining reliable and repeatable. § 29:1 et seq. Ceilings and floors generally, § 24:1 ceilings, § 24:2 floors, § 24:3 Decision, review of, § 27:3 practice and procedure, § 27:5 principles, general, § 27:4

proceedings, types of, § 27:6

specific situations, § 27:7

SPOUSAL SUPPORT ADVISORY **GUIDELINES**—Cont'd Entitlement, § 19:1 Exceptions Generally, § 25:1 to § 25:2 debt payment, § 25:4 financial circumstances in interim period, compelling, § 25:3 illness and disability, § 25:6 non-primary parent to fulfil parenting role under custodial payor formula, § 25:11 non-taxable payor income, § 25:10 other grounds, § 25:14 prior support obligations, § 25:5 property division, reapportionment of property, § 25:8 short marriages without children, § 25:7 small amounts, inadequate compensation under the with child support formula, § 25:13 special needs of child, § 25:12 Judicial reception, § 27:1 July 8, 2008, § 30:1 Observations of SSAG authors, § 27:2 Restructuring generally, § 23:1 duration, extended, § 23:3 front-end loading, § 23:2 lump sum, § 23:4 Retroactive support generally, § 28:1 interim period, for, § 28:2 lump sum issues, other, § 28:6 Not ordered but considered, § 28:7 tax issues and lump sum retroactive awards, § 28:5 variation applications, § 28:3 Review, § 26:3 Steps to using, § 29:2 et seq. Using the ranges compensatory or non-compensatory basis for support, § 22:2 other, § 22:3 property awards, exempt or excluded assets, debts, if any, § 22:1 Variation and review, § 26:1 to § 26:3 SPOUSAL SUPPORT ORDER, DEFINITION Generally, § 1:5

SPOUSE. DEFINITION Generally, § 1:5 SUPPORT APPLICATION, DELAY IN BRINGING Genarally, § 17:6 SUPPORT ORDER Definition, § 1:5 Obligation of payor's estate, § 15:27 Support after termination of support order, § 15:5 Support for definite period, § 15:3 Support for indefinite period, § 15:4 **TERMINATION OF SUPPORT ORDER,** SUPPORT AFTER Generally, § 15:5 **TERM-LIMITED OR INDEFINITE** SPOUSAL SUPPORT ORDER Generally, § 15:3 to § 15:5 **TERMS AND CONDITIONS** Generally, § 15:1 Retroactive spousal support, § 15:2 Specific awards of support designating beneficiary, § 15:12 fluctuating awards, § 15:7 indexed awards, § 15:8 interest on support award, § 15:13 maintaining benefits, § 15:14 matrimonial home, § 15:9 other, § 15:16 provisional awards, § 15:15 remarriage or common-law marriage, § 15:10 support orders binding against estates, § 15:11 Support after termination of order, § 15:5 definite period, for, § 15:3 indefinite period, for, § 15:4 Support until specified event, § 15:6 TERMS AND CONDITIONS OF SPOUSAL SUPPORT ORDER See spousal support TRANSITIONAL PROVISIONS Generally, § 8:5 Commencement, § 8:32

#### TRANSITIONAL PROVISIONS

-Cont'd Orders previously made, variation and enforcement, § 8:8 to § 8:9, § 8:28 support, § 8:14 Person deemed to have contact order, § 8:21 Person deemed to have parenting and decision-making responsibility, § 8:20 Provisional, § 8:30 VARIATION AND REVIEW Generally, § 18:3 to § 18:4 Change in circumstances proving change, onus of, § 18:10 when order may be made, § 18:9 Consent orders for support, § 18:49 Default in payment in variation application, effect of, § 18:43 Delay in enforcement, § 18:8 Factors for variation of spousal support order, § 18:7 Facts known at time of order, § 18:11 Foreign divorces, § 18:56 Interference with parenting time rights, § 18:48 Interim orders. § 18:33 pending variation, § 18:34 Jurisdiction to override spousal support provisions of agreements, § 18:51 Objectives of order. § 18:6 Order incorporating spousal support provisions of agreements, § 18:52 Order to dismiss or terminate support, § 18:53 Payee's circumstances, change in, § 18:23 cohabiting, § 18:25 disabled, § 18:29 inflation. § 18:24 other, § 18:32 Pavee no longer has primary responsibility for children, § 18:27 Property awards to Payee, § 18:28 remarriage, § 18:26 squandering assets, § 18:31 welfare, on, § 18:30 Payor's circumstances, change in, § 18:12 bankruptcy, § 18:13 cohabiting, § 18:14 deceased, § 18:20

#### VARIATION AND REVIEW—Cont'd

Payor's circumstances, change in, § 18:12 -Cont'd future contingencies, § 18:16 involuntary loss of or reduction in income, § 18:18 other, § 18:22 payor voluntarily reducing own income, § 18:19 remarriage, § 18:15 retirement, § 18:17 Relationship between Divorce Act and provincial legislation, § 18:5 Retroactive variation of support orders generally, § 18:44 arrears, § 18:45 delay inducing belief arrears would not be enforced, § 18:46 tax credits, § 18:47 Review proceedings, § 18:57 Section 17 provisions, § 18:1 to § 18:2 Suspension of support payments, § 18:50 Variation and rescission of support orders, § 18:54 to § 18:55 Variation ordered generally, § 18:35 after support for limited term expires, § 18:36 discharge of security, § 18:41 gradual phasing out, § 18:38 lump sum awards, § 18:39 add, § 18:40 mode of payment, change of, § 18:37 support order binding payor's estate, § 18:42 VARIATION OF CHILD SUPPORT Generally, § 5:216, § 5:218 Cases decided before enactment of The

Federal Child support Guidelines, § 5:243 Change in circumstances access provisions not followed, § 5:225 amount includes determination based on applicable table, § 5:220 amount not based on a table, § 5:221 children and post-secondary education, § 5:223 children earning or otherwise receiving income, § 5:224

#### VARIATION OF CHILD SUPPORT -Cont'd

Change in circumstances-Cont'd child withdrawing from parental control, § 5:226 orders before May 1997, § 5:222 payee's income, change in, § 5:233 payee spouse remarrying or entering common law relationship, § 5:234 payor's income, decrease in, § 5:228 payor's income, increase in, § 5:229 payor spouse remarrying or entering common law relationship, § 5:231 undue hardship, § 5:230 Consent, on, § 5:242 Interim support orders, § 5:235 Practice and procedure, § 5:243 Related sections of Divorce Act, § 5:216, § 218 Retroactive, § 5:236 Review of order, § 5:217 Section 17 History, § 5:216

#### VARIATION OF CUSTODY AND ACCESS AWARDS

Change in circumstances generally, § 5:253 children moving, § 5:255 to § 5:259 child's wishes, § 5:254

#### VARIATION OF CUSTODY AND ACCESS AWARDS—Cont'd Change in circumstances—Cont'd conduct affecting children, § 5:262 denial of parenting time by Court or parent, § 5:263 parent's health affecting children, § 5:261

remarriage of parent who does not have majority of parenting time, § 5:260

Interim parenting order, § 5:251 Interim variation of final parenting order, § 5:252 Joint decision-making, § 5:249 Parenting and consent orders, § 5:248

Parenting or contact order, § 5:247 Parenting time orders, § 5:265 to § 5:266 Practice, § 5:264 Sole to joint decision-making, § 5:250

VARIATION ORDER, DEFINITION Generally, § 1:5, § 5:215

#### VARIATION PROCEEDING, DEFINITION Generally, § 1:5

WORDS AND PHRASES Generally, APP WP