

# Table of Contents

## Volume 1

### PART I. CANADIAN DIVORCE LAW AND PRACTICE, 2ND EDITION

#### CHAPTER 1. SHORT TITLE AND INTERPRETATION

##### II. SHORT TITLE

§ 1:2 [1 Short Title]

##### III. INTERPRETATION

###### A. LEGISLATION AND COMMENTARY

§ 1:3 [2 Definitions]

§ 1:5 Section 2—General

###### B. CASE LAW

###### 1. “Appellate Court”

§ 1:6 “Appellate Court”

###### 2. “Child of the Marriage”

§ 1:7 General

§ 1:8 Children under the Age of Majority

§ 1:9 Children Over the Age of Majority

§ 1:10 Withdrawal from Parental Charge

§ 1:11 Unable to Withdraw—Illness or Disability—Child Is a “Child of the Marriage”

§ 1:12 — —Child Is Not a “Child of the Marriage”

§ 1:13 —Education—General

§ 1:14 — —Child Is a “Child of the Marriage”

§ 1:15 — —Child Is Not a “Child of the Marriage”

§ 1:16 — —Child’s Obligation to Contribute to Education

§ 1:17 — —Enrolment in a Full-Time Program of Education—Earning Income

§ 1:18 — —Children Continuing Education—Part-Time Education

§ 1:19 — —Children Continuing Education—After Interruption

§ 1:20 — —Children Continuing Education—Proof of Attendance

§ 1:21 —Lack of Available Employment

§ 1:22 —Miscellaneous  
 § 1:23 Parent-Child Relationship—Child Is a “Child of the Marriage”  
 § 1:24 —Child Is Not a “Child of the Marriage”  
 § 1:25 Support for Transitional Period  
 § 1:26 Standing “In the Place of a Parent”: s. 2(2)—Determination of  
 Whether or Not Spouse Stands in Place of Parent—General  
 § 1:27 — —Procedural Issues  
 § 1:28 — —Spouse Found to Stand in the Place of a Parent  
 § 1:29 — —Spouse Not Standing in the Place of a Parent  
 § 1:30 —Termination of Parent-Child Relationship  
 § 1:31 —Child Support Beyond Termination Date in Order or  
 Agreement  
 3. Other Definitions  
 § 1:32 “Variation Order”  
 § 1:33 “Custody”  
 § 1:34 “Divorce Proceeding”  
 § 1:35 “Spouse”

## **CHAPTER 2. JURISDICTION**

### **I. SECTION 3 JURISDICTION IN DIVORCE PROCEEDINGS**

§ 2:1 [3 Jurisdiction in Divorce Proceedings]  
 § 2:3 General  
 § 2:4 “Habitually Resident”  
 § 2:5 Concurrent Applications  
 § 2:6 Counter-Petitions  
 § 2:7 Other Jurisdictional Issues

### **II. SECTION 4 JURISDICTION IN COROLLARY RELIEF PROCEEDINGS**

§ 2:8 [4 Jurisdiction in Corollary Relief Proceedings]  
 § 2:10 General  
 § 2:11 Jurisdiction to Grant Corollary Relief  
 § 2:12 Severance of Corollary Relief

### **III. SECTION 5 JURISDICTION IN VARIATION PROCEEDINGS**

§ 2:13 [5 Jurisdiction in Variation Proceedings]  
 § 2:14 General  
 § 2:15 —Cases  
 § 2:16 *[Reserved]*

### **IV. SECTION 6 TRANSFER OF PROCEEDING IF PARENTING ORDER APPLIED FOR**

§ 2:17 [6 Transfer of Proceedings Where an Application for a  
 Parenting Order has been Made]

## TABLE OF CONTENTS

- § 2:18 General
- § 2:19 Transfer of Proceedings Where an Application for a Parenting Order Has Been Made

### **V. SECTION 6.1 JURISDICTION—APPLICATION FOR CONTACT ORDER**

- § 2:20 [6.1 Jurisdiction—Application for Contact Order]
- § 2:21 Jurisdictional Requirements for an Application for a Contact Order

### **VI. SECTION 6.2 REMOVAL OR RETENTION OF CHILD OF MARRIAGE**

- § 2:22 [6.2 Removal or Retention of Child of Marriage]
- § 2:23 Jurisdiction in Cases of the Wrongful Removal or Retention of a Child

### **VII. SECTION 6.3 CHILD HABITUALLY RESIDENT OUTSIDE CANADA**

- § 2:24 [6.3 Child Habitually Resident Outside Canada]
- § 2:25 *[Reserved]*
- § 2:26 *[Reserved]*
- § 2:27 Jurisdiction to Determine Parenting Orders or Consent Orders Where the Child is not Habitually Resident in Canada

### **VIII. SECTION 7—JURISDICTION—EXERCISE OF JURISDICTION BY JUDGE**

- § 2:28 [7 Exercise of Jurisdiction by a Judge]
- § 2:29 A Judge Without a Jury

## **CHAPTER 3. DUTIES**

### **I. PARTIES TO A PROCEEDING**

- § 3:1 [7.1 Best Interest of Child]
- § 3:2 Best Interests of the Child
- § 3:3 [7.2 Protection of Children from Conflict]
- § 3:4 Protection of Children from Conflict
- § 3:5 [7.3 Family Dispute Resolution Process]
- § 3:6 Family Dispute Resolution Process
- § 3:7 [7.4 Complete, Accurate and Up-to-Date Information]
- § 3:8 Complete, Accurate and Up-to-Date Information
- § 3:9 [7.5 Duty to Comply with Orders]
- § 3:10 Duty to Comply with Orders
- § 3:11 [7.6 Certification]
- § 3:12 Certification

### **II. LEGAL ADVISER**

- § 3:13 [7.7 Reconciliation]

§ 3:14 Duties of Legal Advisers

### III. COURT

§ 3:15 [7.8 Purpose of Section]

§ 3:16 Conflicting Orders and Civil Protection Orders

## CHAPTER 4. DIVORCE

### I. SECTION 8—DIVORCE—GROUND

#### A. LEGISLATION AND COMMENTARY

§ 4:1 [8 Divorce]

§ 4:3 Breakdown of Marriage—General

§ 4:4 —Living Separate and Apart

§ 4:5 —Adultery and Cruelty

§ 4:6 —Reconciliation

§ 4:7 —Related Sections

#### B. CASE LAW

##### 1. General

§ 4:8 Marriage Validity in General

§ 4:9 —General

§ 4:10 —Valid Marriage Found

§ 4:11 —Marriage Found to Be Invalid

§ 4:12 Marriages of Convenience

§ 4:13 Capacity to Divorce

§ 4:14 Counter-Petitions

§ 4:15 Incorporating Agreements into Divorce Orders

##### 2. Separate and Apart

§ 4:16 Separate and Apart—Guidelines for Determining “Separate and Apart”

§ 4:17 “Separate and Apart”—Requirement of Intention

§ 4:18 Date of Separation

§ 4:19 —Meaning of “Deemed”, s. 8(3)(a)

§ 4:20 Separate and Apart—Particular Situations—Temporary Physical Separations

§ 4:21 —Separation—Insanity or Long-Term Hospitalization

§ 4:22 —Compassionate Hospital Visits

§ 4:23 “Separate and Apart” under Same Roof—General

§ 4:24 —Criteria

§ 4:25 “Separate and Apart”—Cessation of Intercourse

§ 4:26 —Marriage Breakdown under Same Roof—Examples

§ 4:27 Circumstances Not Amounting to Marriage Breakdown

§ 4:28 Sexual Intercourse During Separation

## TABLE OF CONTENTS

### 3. Resumption of Cohabitation

§ 4:29 Resumption of Cohabitation—Reconciliation Attempt—General

### 4. Adultery

§ 4:30 Adultery Generally

§ 4:31 Standard of Proof

§ 4:32 Examples—General

§ 4:33 Admissions of Adultery

§ 4:34 Adulterous Acts After Divorce Applications

§ 4:35 Denial of Adultery

§ 4:36 Evidence of Adultery

§ 4:37 Evidence of Co-Respondents

§ 4:38 Proof of Adultery

§ 4:39 Privilege—Self-Incrimination in Adultery Cases

§ 4:40 Requirement of Corroboration

### 5. Cruelty

§ 4:41 General

§ 4:42 Definition of Cruelty

§ 4:43 Subjective Test for Cruelty

§ 4:44 Relevant Time

§ 4:45 Intolerability

§ 4:46 Continued Cohabitation

§ 4:47 Cruelty—Examples

§ 4:48 Mental Cruelty: Humiliation, Harassment, Criticism

§ 4:49 Mental Illness

§ 4:50 Mutual Cruelty

§ 4:51 Neglect and Taciturnity

§ 4:52 Philandering

§ 4:53 Physical Violence

§ 4:54 Provocation

§ 4:55 Refusal to Have Children

§ 4:56 Religious Intolerance

§ 4:57 Sexual Practices/Issues

## II. SECTION 9 REPEALED

§ 4:58 [9 Repealed]

§ 4:60 General

## III. SECTION 10 DUTY OF COURT—RECONCILIATION

§ 4:61 [10 Duty of Court]

§ 4:63 Duty of Court—Reconciliation

§ 4:64 One Spouse Seeking Reconciliation

§ 4:65 Procedure for Determining Possibility of Reconciliation

§ 4:66 Resumption of Proceedings

§ 4:67 Communications Made in Course of Reconciliation Efforts

**IV. SECTION 11 DUTY OF COURT—BARS**

- § 4:68 [11 Duty of Court]
- § 4:70 Collusion—s. 11(1)(a)
- § 4:71 Reasonable Arrangements for Support of Children—s. 11(1)(b)
- § 4:72 Connivance—s. 11(1)(c)
- § 4:73 Condonation—s. 11(1)(c)
- § 4:74 Doctrine of Revival—s. 11(2)
- § 4:75 Definition of “Collusion”—s. 11(4)

**V. SECTION 12 EFFECTIVE DATE**

- § 4:76 [12 Effective Date Generally]
- § 4:78 Effective Date of Divorce
- § 4:79 Effective Date Generally s. 12(1)
- § 4:80 Earlier Effective Date—Special Circumstances s. 12(2)
- § 4:81 Earlier Effective Date—Undertaking Not to Appeal s. 12(2)(b)
- § 4:82 Effective Date Where Appeal s. 12(3)
- § 4:83 Notice of Appeal s. 12(5)
- § 4:84 Conclusive Proof s. 12(8)
- § 4:85 Reconciliation

**VI. SECTION 13 LEGAL EFFECT THROUGHOUT CANADA**

- § 4:86 [13 Legal Effect Throughout Canada]

**VII. SECTION 14 MARRIAGE DISSOLVED**

- § 4:88 [14 Marriage Dissolved]
- § 4:90 General

**CHAPTER 5. COROLLARY RELIEF**

**I. CHILD SUPPORT ORDER; SPOUSAL SUPPORT ORDER; PRIORITY**

**B. COMMENTARY AND CASE LAW**

**1. General**

- § 5:6 Child Support—Overview
- § 5:7 —General
- § 5:8 Jurisdiction
- § 5:9 —In Child Support Proceedings
- § 5:10 —In Variation Proceedings
- § 5:11 —To Make Child Support Orders—Case Law
- § 5:12 Child Support—Awards under Provincial Legislation and Awards under the Divorce Act

**2. Constitutional Issues**

- § 5:13 Paramountcy

TABLE OF CONTENTS

§ 5:14	Charter of Rights and Freedoms
§ 5:15	Support under Provincial Statutes
	3. Parties and Evidentiary Issues
§ 5:16	Parties
§ 5:17	Evidentiary Issues
	4. Entitlement; Priority; Interim Support
§ 5:18	Entitlement
§ 5:19	Child Support—Priority Over Other Obligations: s. 15.3
§ 5:20	Interim Support—General: s. 15.1(2)
§ 5:21	Interim Child Support in Accordance with the Guidelines
	5. Terms and Conditions: s. 15.1(4)
	a. Retroactive Child Support
§ 5:22	Supreme Court of Canada
§ 5:23	Meaning of Retroactive
§ 5:24	Availability of Retroactive Orders
§ 5:25	Objectives
§ 5:26	Factors
§ 5:27	—Delay
§ 5:28	—The Conduct of the Parent
§ 5:29	—The Circumstances of the Children
§ 5:30	—The Hardship the Retroactive Award Might Entail
§ 5:31	Commencement Date for Retroactive Child Support
§ 5:32	Period of Retroactive Child Support—Is There a Limitation Period?
§ 5:33	Jurisdiction under Both the Divorce Act and Provincial Legislation
§ 5:34	Whether Same Principles Apply Federally and Provincially
§ 5:35	Guideline Formulas or Court’s Discretion
§ 5:36	Retroactive Child Support Ordered
§ 5:37	No Retroactive Child Support Ordered
§ 5:38	General
	b. Payment; Duration; Set-off
§ 5:39	Methods of Payment—Lump Sum
§ 5:40	—General
§ 5:41	—Lump Sum Child Support Granted—Permanent Lump Sum Order—Compensation for the Past
§ 5:42	— —Risk of Future Inability or Unwillingness to Pay Periodic Installments
§ 5:43	— —Windfall Funds
§ 5:44	— —Payor Parent Resides in a Different Jurisdiction from the Payee Parent and the Child(ren). . .
§ 5:45	—Lump Sum Not Ordered
§ 5:46	—Other Cases
§ 5:47	Orders to Secure Payment
§ 5:48	Duration of Orders: s. 15.1(4)

§ 5:49	Payment to Child
§ 5:50	Third-Party Payments
§ 5:51	Set-Off
	c. Prior Orders, Judgements and Written Agreements; Repudiation; Child's Receipt of Income or Benefits
§ 5:52	Child support—Effect of Prior Orders, Judgments and Written Agreements: s. 15.1(5)
§ 5:53	Child's Repudiation of Parent-Child Relationship—Child's Rejection of Parent—No Support
§ 5:54	Child's Rejection of Parent—Support Granted
§ 5:55	Child's Receipt of Income or Benefits—Child's Own Income
§ 5:56	—Child's Receipt of Social Assistance/Income from Other Sources
	d. Miscellaneous
§ 5:57	Death of Payor or Payee
§ 5:58	Effect of Reconciliation Attempt
§ 5:59	Duty to Disclose Financial Circumstances
§ 5:60	Adoption Orders
§ 5:61	Costs
§ 5:62	Other
	e. Federal Child Support Guidelines
§ 5:63	Overview
§ 5:64	Specific Sections
§ 5:65	Section 3—Presumptive Rule—Section 3(2)—Support Where Child Is Age of Majority or Over
§ 5:66	—Table Amount
§ 5:67	—2017 Update to the Federal Child Support Table
§ 5:68	—Note
§ 5:69	—Special or Extraordinary Expenses
§ 5:70	—Where Guidelines “Provide Otherwise”
§ 5:71	Child Support—Payor Income more than \$150,000—Federal Child Support Guidelines, s. 4
§ 5:72	Child Support—Payor Standing in Place of a Parent—Federal Child Support Guidelines, s. 5
§ 5:73	Child Support—Special or Extraordinary Expenses—Federal Child Support Guidelines, s. 7 General
§ 5:74	Child support—Split Parenting Time—Federal Child Support Guidelines, s. 8
§ 5:75	Child Support—Shared Parenting Time—Federal Child Support Guidelines, s. 9
	f. Income Tax Considerations
§ 5:76	Tax Consequences of Agreement or Order
§ 5:77	Deduction/Inclusion Rules
§ 5:78	Elimination of Deduction/Inclusion Rule for Child Support



## TABLE OF CONTENTS

- § 5:79 Determining the Support Amount to Be Included in Income
- § 5:80 Agreements or Orders Made Before May 1997
- § 5:81 Commencement Day
- § 5:82 Prior Payments Where No Variation
- § 5:83 Prior Payments with Variation
- § 5:84 Third-Party Payments
- § 5:85 Effect of the Formulae
- § 5:86 Spouse Is Exempt from Paying Federal or Provincial Income Tax
- § 5:87 —Cases Decided Before the Enactment of the Federal Child Support Guidelines
- § 5:88 Income Tax Considerations—Miscellaneous

## II. SECTION 16 COROLLARY RELIEF—BEST INTERESTS OF THE CHILD

### A. LEGISLATION AND COMMENTARY

- § 5:89 [16 Best Interests of Child]
- § 5:91 *[Reserved]*
- § 5:92 *[Reserved]*
- § 5:93 *[Reserved]*
- § 5:94 General—Best Interests—Only Consideration: s. 16(1)

### B. CASE LAW

#### 1. Procedure

- § 5:94.50 Introduction
- § 5:95 Primary Consideration—The Child’s Physical, Emotional and Psychological Safety and Well-Being: s. 16(2)
- § 5:96 Factors Related to the Circumstances of the Child: 16(3)
- § 5:97 In Considering the Impact of Any Family Violence under s.16(3)(j), the Court Will Take Into Account Various Matters: s.16(4)
- § 5:98 Past Conduct: s. 16(5)
- § 5:99 As Much Parenting Time as is Consistent with the Best Interests of Child: s.16(6)
- § 5:100 Parenting Order and Contact Order: s. 16(7)

#### 2. Evidence

- § 5:101 Other Best Interests Issues

#### 3. Best Interests Factors

- § 5:102 Determining Best Interests Using Assessors and Assessments

## III. PARENTING ORDERS

- § 5:103 [16.1 Parenting Order]
- § 5:104 [16.2 Parenting Time—Schedule]
- § 5:105 [16.3 Allocation of Decision-Making Responsibility.]
- § 5:106 [16.4 Entitlement to Information.]

- § 5:107 Corollary Relief—Parenting Orders
- § 5:108 Parenting Orders—General
- § 5:109 —Interim Orders
- § 5:110 —Application by Person Other Than Spouse
- § 5:111 —Contents of Parenting Orders
- § 5:112 —Terms and Conditions
- § 5:113 —Family Dispute Resolution Process
- § 5:114 —Relocation
- § 5:115 —Supervision
- § 5:116 —Prohibition on Removal of Child
- § 5:117 Parenting Time—Schedule
- § 5:118 Allocation of Decision-Making Responsibility
- § 5:119 Entitlement to Information

#### **IV. CONTACT ORDERS**

- § 5:120 [16.5 Contact Order]
- § 5:121 Contact Order

#### **V. PARENTING PLAN**

- § 5:122 [16.6 Parenting Plan]
- § 5:123 Parenting Plans
- § 5:124 to 5:201 *[Reserved]*

#### **VI. CHANGE IN PLACE OF RESIDENCE**

- § 5:202 [16.7 Non-Application]
- § 5:203 [16.8 Notice]
- § 5:204 Notice of Change of Residence

#### **VII. RELOCATION**

- § 5:204.50 Relocation—Introduction
- § 5:205 [16.9 Notice]
- § 5:206 [16.91 Relocation Authorized]
- § 5:207 [16.92 Best Interests of Child—Additional Factors to Be Considered]
- § 5:207.50 [16.92 Best Interests of Child—Factors Not to Be Considered]
- § 5:208 [16.93 Burden of Proof—Person Who Intends to Relocate Child]
- § 5:209 [16.94 Power of Court—Interim Order]
- § 5:210 [16.95 Costs Relating to Exercise of Parenting Time.]
- § 5:211 [16.96 Notice—Persons with Contact]
- § 5:211.50 Procedural Matters
- § 5:212 *[Reserved]*
- § 5:213 *[Reserved]*
- § 5:214 Relocation—Orders
- § 5:214.50 *[Reserved]*

TABLE OF CONTENTS

**VIII. SECTION 17 VARIATION, RESCISSION OR  
SUSPENSION OF ORDERS**

- § 5:215 [17 Variation order]
- § 5:217 Variation and Review of Child Support Orders
- § 5:218 Variation of Child Support Orders—General
- § 5:219 —Related sections of the Divorce Act
- § 5:220 Child Support—Where Amount Includes a Determination  
Based on the Applicable Table—Change in Circumstances—  
Change Which Would Produce a Different Child Support  
Order under the *Divorce Act*, s. 17(4) and *Federal Child  
Support Guidelines*, s. 14(a)
- § 5:221 —Where Amount of Child Support Not Based on Table,  
Change in Circumstances—Change in Condition, Means,  
Needs or Other Circumstances—*Divorce Act*, s. 17(4) and  
*Federal Child Support Guidelines*, s. 14(b)
- § 5:222 —Change in Circumstances—Orders Before May, 1997,  
*Federal Child Support Guidelines*, s. 14(c)
- § 5:223 Change in Circumstances—Children—Post-Secondary  
Education
- § 5:224 —Children Earning or Otherwise Receiving Income
- § 5:225 —Access Provisions Not Followed
- § 5:226 —Child Withdrawing from Parental Control
- § 5:227 —Other
- § 5:228 Change in Circumstances—Payor—Decrease in Payor’s  
Income
- § 5:229 —Increase in Payor’s Income
- § 5:230 —Undue Hardship
- § 5:231 —Payor Spouse Remarrying or Entering Common Law  
Relationship
- § 5:232 —Other
- § 5:233 Change in Circumstances—Payee—Change in Payee’s Income
- § 5:234 —Payee Spouse Remarrying or Entering Common Law  
Relationship
- § 5:235 Variation of Interim Child Support Orders
- § 5:236 Terms and Conditions—Change in Circumstances—  
Children—Variation of Child Support Retroactively
- § 5:237 —Variation of Periodic Award of Child Support to Lump Sum
- § 5:238 Variation—Arrears
- § 5:239 Amount Different from the Guidelines Because of Order,  
Judgment or Agreement—Special Provisions (*Divorce Act*, s.  
17(6.2))
- § 5:240 Miscellaneous
- § 5:241 Review
- § 5:242 Variation of Child Support Orders on Consent
- § 5:243 Variation of Child Support Orders—Practice and Procedure
- § 5:244 Separation Agreements—Child Support
- § 5:245 —Cases Decided Before the Enactment of the *Federal Child  
Support Guidelines*
- § 5:246 —Parenting Order or Contact Order

§ 5:247 Variation of Parenting Order or Contact Order—General  
 § 5:248 Variation of Parenting Orders and Consent Orders  
 § 5:249 Variation of Joint Decision-Making  
 § 5:250 Variation from Sole to Joint Decision-Making  
 § 5:251 Variation of Interim Parenting Order  
 § 5:252 Interim Variation of Final Parenting Order  
 § 5:253 Change in Circumstances—General  
 § 5:254 —Child’s Wishes  
 § 5:255 —Children Moving  
 § 5:256 —Amendments to the *Divorce Act*  
 § 5:257 —Children Moving—General  
 § 5:258 — —Relocation Permitted  
 § 5:259 — —Relocation Denied  
 § 5:260 —Remarriage of Parent Who Does Not Have the Majority of Parenting Time  
 § 5:261 —Parents’ Health Affecting Children  
 § 5:262 —Conduct Affecting Children  
 § 5:263 —Denial of Parenting Time by the Court or Parent  
 § 5:264 Practice  
 § 5:265 Variation of Parenting Time Orders  
 § 5:266 Review of Parenting Orders

**IX. PROCEEDINGS BETWEEN PROVINCES AND BETWEEN A PROVINCE AND A DESIGNATED JURISDICTION TO OBTAIN, VARY, RESCIND OR SUSPEND SUPPORT ORDERS OR TO RECOGNIZE DECISIONS OF DESIGNATED JURISDICTIONS**

**A. DEFINITIONS**

§ 5:267 [17.1 Repealed]  
 § 5:269 Variation Order by Affidavit

**X. SECTION 18**

§ 5:270 [18 Definitions]  
 § 5:272 General  
 § 5:273 [*Reserved*]  
 § 5:274 Case Law

**XI. INTER-JURISDICTIONAL PROCEEDINGS BETWEEN PROVINCES**

**A. RECEIPT AND SENDING OF APPLICATIONS**

§ 5:275 [18.1 If Former Spouses Reside in Different Provinces]  
 § 5:276 Receipt and Sending of Applications

**B. CONVERSION OF APPLICATIONS**

§ 5:277 [18.2 Application to Court]

## TABLE OF CONTENTS

- § 5:278 General
- § 5:279 [18.3 No Action by Respondent]
- § 5:280 No Action by Respondent

## **XII. PROCEEDINGS BETWEEN A PROVINCE AND A DESIGNATED JURISDICTION**

### **A. RECEIPT AND SENDING OF DESIGNATED JURISDICTIONS' APPLICATIONS**

- § 5:281 [19 If applicant resides in designated jurisdiction]
- § 5:283 Receipt and Sending of Designated Jurisdictions' Applications
- § 5:284 [*Reserved*]

## **XIII. RECOGNITION OF DECISIONS OF DESIGNATED JURISDICTION**

- § 5:285 [19.1 Recognition of Decision of Designated Jurisdiction Varying Support Order]
- § 5:286 Recognition of Decision of Designated Jurisdiction Varying Support Order

## **XIV. LEGAL EFFECT, ENFORCEMENT, COMPLIANCE AND ASSIGNMENT**

- § 5:287 [20 Definition of "Court"]
- § 5:289 Legal Effect, Enforcement, Compliance and Assignment
- § 5:290 Registration of Orders
- § 5:291 "Enforced in a Province in Any Other Manner Provided by the Laws of That Province, . . ."
- § 5:292 Variation of a Corollary Relief Order

## **XV. ASSIGNMENT OF ORDER**

- § 5:293 [20.1 Assignment of Order]
- § 5:294 General

## **CHAPTER 6. APPEALS**

- § 6:1 [21 Appeal to Appellate Court]
- § 6:3 General
- § 6:4 Appeals—Jurisdiction
- § 6:5 Standard of Review for Errors of Law
- § 6:6 —Error in Law—Failure to Provide Sufficient Reasons
- § 6:7 —Cases Where the Trial Judge Failed to Give Reasons
- § 6:8 —*Hickey v. Hickey* Formulation
- § 6:9 —Error in Principle
- § 6:10 —Misapprehension of Evidence
- § 6:11 Standard of Review for Mixed Errors of Fact and Law
- § 6:12 Standard of Review for Errors of Fact
- § 6:13 Lack of Procedural Fairness
- § 6:14 Fresh Evidence

§ 6:15 Timeframe for Appeal  
 § 6:16 Appeal from Interim Orders—General  
 § 6:17 —Interim Support  
 § 6:18 —Interim Parenting  
 § 6:19 Stay Pending Appeal  
 § 6:20 Stay of Appeal  
 § 6:21 Effective Date of Order  
 § 6:22 Appeals—Practice and Procedure  
 § 6:23 —Costs  
 § 6:24 —Failure to Make Full Financial Disclosure  
 § 6:25 —Parenting  
 § 6:26 —Parenting Time  
 § 6:27 —Support

## **CHAPTER 7. GENERAL**

### **I. REMOVAL OF BARRIERS TO RELIGIOUS REMARRIAGE**

§ 7:1 [21.1]  
 § 7:3 Barriers to Remarriage—General

### **II. RECOGNITION OF FOREIGN DIVORCE**

§ 7:4 [22 Recognition of Foreign Divorce]  
 § 7:6 Introduction  
 § 7:7 General  
 § 7:8 Presumption of Validity: s. 22(1)  
 § 7:9 —Recognition of Religious Divorces Granted by a Tribunal or Other Authority  
 § 7:10 Wife’s Domicile: s. 22(2)  
 § 7:11 Common Law Rules—Foreign Divorce: s. 22(3)—General  
 § 7:12 —Real and Substantial Connection with Foreign Jurisdiction  
 § 7:13 Defences to the Recognition of Foreign Divorces—Violation of Natural Justice  
 § 7:14 —Fraud  
 § 7:15 —Contrary to Public Policy  
 § 7:16 Preclusion from Denying Validity  
 § 7:17 Miscellaneous

### **III. SECTION 22.1 RECOGNITION OF FOREIGN ORDER THAT VARIES PARENTING OR CONTACT ORDER**

§ 7:18 [22.1 Recognition of Foreign Order That Varies Parenting or Contact Order]  
 § 7:19 Recognition of Foreign Order That Varies Parenting or Contact Order

TABLE OF CONTENTS

**IV. SECTION 23 PROVINCIAL LAWS OF EVIDENCE**

**A. LEGISLATION**

§ 7:20 [23 Provincial Laws of Evidence]

**B. CASE LAW**

§ 7:22 General

§ 7:23 Admissibility of Evidence

§ 7:24 Hearsay Evidence—General

§ 7:25 Expert Evidence—General

§ 7:26 Litigation Privilege and Solicitor-Client Privilege—General  
Principles of Solicitor-Client Privilege

§ 7:27 Res Judicata

§ 7:28 Evidence: Striking Pleadings

§ 7:29 Proof of Marriage

**V. SECTION 23.1 MEANS OF PRESENTING SUBMISSIONS**

§ 7:30 [23.1 Means of Presenting Submissions]

§ 7:31 Means of Presenting Submissions

**VI. SECTION 23.2 OFFICIAL LANGUAGES**

§ 7:32 [23.2 Official Languages]

§ 7:33 Official Languages

**VII. SECTION 24 PROOF OF SIGNATURE OR OFFICE**

§ 7:34 [24 Proof of Signature or Office.]

**VIII. SECTION 25 RULES**

§ 7:35 [25 Definition of “Competent Authority”]

§ 7:37 Provincial Rules

§ 7:38 Desk Divorces

§ 7:39 Representation at Proceedings

§ 7:40 Summary Judgement for Divorce

§ 7:41 Discovery in Divorce Matters

§ 7:42 Publication Bans

**IX. SECTION 25.01 PROVINCIAL CHILD SUPPORT SERVICE—CALCULATION OF CHILD SUPPORT**

§ 7:43 [25.01 Provincial Child Support Service—Calculation of Child Support]

§ 7:44 General

**X. SECTION 25.1 PROVINCIAL CHILD SUPPORT SERVICE—RECALCULATION OF CHILD SUPPORT**

§ 7:45 [25.1 Provincial child support service—recalculation of child support]

§ 7:47 General

**XI. SECTION 25.2 MINISTERIAL ACTIVITIES**

§ 7:48 [25.2 Ministerial Activities]

§ 7:49 Ministerial Activities

**XII. SECTION 26 REGULATIONS**

§ 7:50 [26 Regulations]

§ 7:52 Federal Regulations

**XIII. SECTION 26.1 GUIDELINES**

§ 7:53 [26.1 Guidelines]

§ 7:55 Guidelines

**XIV. SECTION 27 FEES**

§ 7:56 [27 Fees]

**XV. SECTION 28 INTERNATIONAL CONVENTIONS**

§ 7:57 [28 Repealed; Proposed Amendment]

**XVI. IMPLEMENTATION, INTERPRETATION AND APPLICATION OF THE 2007 CONVENTION**

§ 7:58 [28.1 Force of Law—Inconsistency]

§ 7:59 [28.2 Explanatory Report]

§ 7:60 [28.3 Application]

§ 7:61 [28.4 Recognition of State Party Decision Varying Child Support Order]

§ 7:62 [28.5 Establishment or Variation of Child Support Order or Calculation or Recalculation of Amount]

**XVII. SECTION 29 APPLICATION OF DEBTOR TO CENTRAL AUTHORITY**

§ 7:63 [29 Repealed; Proposed Amendment]

**XVIII. SECTION 29.1 VARIATION OF CHILD SUPPORT ORDER OR RECALCULATION OF AMOUNT**

§ 7:64 [29.1 Variation of Child Support Order or Recalculation of Amount]

**XIX. SPOUSAL SUPPORT ORDERS**

§ 7:65 [29.2 Declaration in Respect of a Province]

§ 7:66 [29.3 Recognition of State Party Decision Varying Support Order—Registration and Recognition—Enforcement.]

§ 7:67 [29.4 Recognition of State Party Decision Suspending or



TABLE OF CONTENTS

Limiting Enforcement of Support Order—Registration and  
Recognition—Enforcement]

§ 7:68 [29.5 Support Decision Obtained in State Party—Exceptions]

**XX. SECTION 30 CONVENTION ON JURISDICTION,  
APPLICABLE LAW, RECOGNITION, ENFORCEMENT  
AND CO-OPERATION IN RESPECT OF PARENTAL  
RESPONSIBILITY AND MEASURES FOR THE  
PROTECTION OF CHILDREN**

A. DEFINITIONS

§ 7:69 [30 Repealed; Definitions “1996 Convention”—“State Party”]

**XXI. IMPLEMENTATION, INTERPRETATION AND  
APPLICATION OF THE 1996 CONVENTION**

A. GENERAL

§ 7:70 [30.1 Force of Law]

§ 7:71 [30.2 Explanatory Report]

§ 7:72 [30.3 Application]

B. JURISDICTION

§ 7:73 [30.4 Child Habitually Resident in State Party]

§ 7:74 [30.5 Wrongful Removal or Retention]

§ 7:75 [30.6 Child Present in Province]

§ 7:76 [30.7 Divorce Proceeding—Child Habitually Resident in State  
Party]

C. TRANSFER OF JURISDICTION

§ 7:77 [30.8 State Party Better Placed to Assess Child’s Best  
Interests]

§ 7:78 [30.9 Canadian Court Better Placed to Assess Child’s Best  
Interests]

**XXII. SECTION 31 URGENCY**

A. URGENT CASES

§ 7:79 [31 Repealed; Urgent Cases]

B. RECOGNITION

§ 7:80 [31.1 Recognition by Operation of Law]

§ 7:81 [31.2 Jurisdiction Respecting Recognition]

§ 7:82 [31.3 Enforcement]

## **CHAPTER 8. TRANSITIONAL PROVISIONS AND COMMENCEMENT**

### **I. TRANSITIONAL PROVISIONS**

#### **A. SECTION 32 TRANSITIONAL PROVISIONS**

§ 8:1 [32 Proceedings Based on Facts Arising Before Commencement of Act]

#### **B. SECTION 33 REPEALED**

§ 8:3 [33 Repealed]

§ 8:5 General

#### **C. SECTION 34 VARIATION AND ENFORCEMENT OF ORDERS PREVIOUSLY MADE**

§ 8:6 [34 Variation and Enforcement of Orders Previously Made]

§ 8:8 Undifferentiated Support

§ 8:9 General

#### **D. SECTION 35 PROCEDURAL LAWS CONTINUED**

§ 8:10 [35 Procedural Laws Continued]

#### **E. SECTION 35.1 VARIATION AND ENFORCEMENT OF SUPPORT ORDERS PREVIOUSLY MADE**

§ 8:12 [35.1 Variation and Enforcement of Support Orders Previously Made]

§ 8:14 General

#### **F. SECTION 35.2 AGREEMENTS ENTERED INTO UNDER SUBSECTION 25.1(1)**

§ 8:15 [35.2 Agreements Entered into under Subsection 25.1(1)]

§ 8:16 Agreements Entered Into under Subsection 25.1(1)

#### **G. SECTION 35.3 PROCEEDINGS COMMENCED BEFORE COMING INTO FORCE**

§ 8:17 [35.3 Proceedings Commenced Before Coming into Force]

§ 8:18 Proceedings Commenced Before Coming Into Force

#### **H. SECTION 35.4 PERSON DEEMED TO HAVE PARENTING TIME AND DECISION-MAKING RESPONSIBILITY**

§ 8:19 [35.4 Person Deemed to Have Parenting Time and Decision-Making Responsibility]

TABLE OF CONTENTS

§ 8:20 Person Deemed to Have Parenting Time and Decision-making  
Responsibility

**I. SECTION 35.5 PERSON DEEMED TO HAVE CONTACT  
ORDER**

§ 8:21 [35.5 Person Deemed to Have Contact Order]

§ 8:22 Person Deemed to Have Contact Order

**J. SECTION 35.6 NO NOTICE**

§ 8:23 [35.6 No Notice]

§ 8:24 No Notice

**K. SECTION 35.7 NO CHANGE IN CIRCUMSTANCES**

§ 8:25 [35.7 No Change in Circumstances]

§ 8:26 No Change in Circumstances

**L. SECTION 35.8 VARIATION OF ORDERS PREVIOUSLY  
MADE**

§ 8:27 [35.8 Variation of Orders Previously Made]

§ 8:28 Variation of Orders Previously Made

**M. SECTION 35.9 PROVISIONAL ORDERS**

§ 8:29 [35.9 Provisional Orders]

§ 8:30 Provisional Orders

**II. COMMENCEMENT**

**A. SECTION 36 COMMENCEMENT**

§ 8:31 [36 Commencement]

§ 8:32 Schedule

**PART II. WILTON & SEMPLE SPOUSAL  
SUPPORT COMMENTARY**

**SUBPART A. DIVORCE ACT**

**CHAPTER 9. INTRODUCTION AND  
APPLICATION OF THE STATUTES**

§ 9:1 The Portions of s. 15 of the Divorce Act That Deal with Spousal  
Support

§ 9:3 Introduction

§ 9:4 Application of Statutes

§ 9:5 Grounds for Entitlement to Spousal Support

**CHAPTER 10. JURISDICTION**

§ 10:1 Jurisdiction in Corollary Relief Proceedings

- § 10:2 Jurisdiction in Variation Proceedings
- § 10:3 Jurisdiction to Make Support Orders—Case Law
- § 10:4 Constitutional Issues
- § 10:5 Proceedings Between Provinces and Between Provinces and Designated Jurisdictions to Obtain, Vary, Rescind, or Suspend Support Orders, or to Recognize Decision of Designated Jurisdictions

## **CHAPTER 11. PARTIES**

- § 11:1 Spouses or Former Spouses

## **CHAPTER 12. INTERIM AND INDEFINITE SUPPORT**

- § 12:1 General
- § 12:2 Interim Support
- § 12:3 —Jurisdiction to Grant Interim Relief
- § 12:4 —General—Case Law
- § 12:5 —Evidence and Disclosure
- § 12:6 —Relationship of Interim Support to Permanent Support
- § 12:7 —Defences—Delay in Application for Interim Support
- § 12:8 —Miscellaneous
- § 12:9 Indefinite Support

## **CHAPTER 13. FACTORS**

- § 13:1 General
- § 13:2 Means and Needs of Party from Whom Support Is Sought
- § 13:3 Post-Separation Increases in the Payor Spouse’s Income—Introduction
- § 13:4 —Increase in Support Granted or Time-Limited Support Extended
- § 13:5 —Increase in Support Not Granted
- § 13:6 Means and Needs of Party Seeking Support
- § 13:7 Length of Relationship
- § 13:8 Functions Performed by Each Spouse During Cohabitation
- § 13:9 Order, Agreement, or Arrangement Relating to Support

## **CHAPTER 14. OBJECTIVES**

- § 14:1 Objectives—General
- § 14:2 Economic Advantages or Disadvantages Arising from the Marriage or Its Breakdown
- § 14:3 Financial Consequences Arising from the Care of Any Child of the Marriage
- § 14:4 Economic Hardship of the Spouses Arising from the Breakdown of the Marriage
- § 14:5 Promotion of Economic Self-Sufficiency

## **CHAPTER 15. TERMS AND CONDITIONS**

### **I. GENERAL**

- § 15:1 Terms and Conditions—General
- § 15:2 Retroactive Spousal Support

### **II. TERM-LIMITED OR INDEFINITE**

- § 15:3 Support for a Definite Period
- § 15:4 Support for an Indefinite Period
- § 15:5 Support After Termination of Support Order

### **III. TERMS AND CONDITIONS**

- § 15:6 Support Until Specified Event
- § 15:7 Specific Awards of Support—Fluctuating Awards
- § 15:8 —Indexed Awards
- § 15:9 —Matrimonial Home
- § 15:10 —Remarriage or Common-Law Union
- § 15:11 —Support Orders Binding Against Estates
- § 15:12 —Designating Beneficiary
- § 15:13 —Interest on Support Award
- § 15:14 —Maintaining Benefits
- § 15:15 —Provisional Awards
- § 15:16 —Other

### **IV. SPOUSAL SUPPORT—METHOD OF PAYMENT— LUMP SUM OR PERIODIC—“TO SECURE OR PAY”**

- § 15:17 Generally
- § 15:18 Lump Sum—Jurisdiction
- § 15:19 —General
- § 15:20 —Granted—Examples
- § 15:21 —Refusal of Awards
- § 15:22 —In Addition to Periodic Sums
- § 15:23 —Calculations
- § 15:24 Spousal Support—“To Secure or Pay”
- § 15:25 Miscellaneous

### **V. REVIEW TERMS; SUPPORT ORDER AS OBLIGATION OF THE PAYOR’S ESTATE**

- § 15:26 Review Terms
- § 15:27 Support Order as an Obligation of the Payor’s Estate

## **CHAPTER 16. DETERMINATION OF INCOME**

### **I. OVERVIEW**

- § 16:1 Introduction

- § 16:2 Use of the CSG in SSAG Calculations
- § 16:3 Differences in Calculating Income for SSAG Purposes and CSG Purposes

## II. OTHER INCOME ISSUES

- § 16:4 Concerns Regarding Income Determination Involving Self-Employment Income and Various Forms of Non-Employment Income
  - § 16:5 Without Child Support and with Child Support Formulas
  - § 16:6 Miscellaneous
- Appendix 16A. Federal Child Support Guidelines, Can. Reg. 97-175

## CHAPTER 17. OTHER ISSUES

- § 17:1 Disclosure—Overview
- § 17:2 —Case Law—General
- § 17:3 — —Third Parties
- § 17:4 — —Sanctions, Penalties and Costs
- § 17:5 — —Practice and Procedure
- § 17:6 Delay in Bringing Support Application
- § 17:7 Relationship between Spousal Support and Child Support
- § 17:8 Effects of Property Awards
- § 17:9 —Pensions and Spousal Support
- § 17:10 Conduct
- § 17:11 Income Tax Issues
- § 17:12 Nominal Awards
- § 17:13 Retroactive Support

## Volume 6

## CHAPTER 18. VARIATION AND REVIEW

- § 18:1 Provisions in s. 17 of the Divorce Act Relevant to the Variation of Spousal Support Orders
- § 18:3 Introduction
- § 18:4 Variation—General
- § 18:5 —Relationship between *Divorce Act* and Provincial Legislation
- § 18:6 —Objectives of Variation Order
- § 18:7 —Factors for a Variation of a Spousal Support Order
- § 18:8 Variation and Delay in Enforcement
- § 18:9 Variation—Change in Circumstances—When Variation Order May Be Made—Meaning of Change of Circumstances
- § 18:10 Variation—Change of Circumstances—Onus of Proving Change
- § 18:11 —Facts Known at Time of Order
- § 18:12 Variation—Change in Payor’s Circumstances
- § 18:13 —Payor’s Bankruptcy
- § 18:14 —Payor Cohabiting

## TABLE OF CONTENTS

- § 18:15 —Remarriage of Payor
- § 18:16 —Payor’s Future Contingencies
- § 18:17 —Payor’s Retirement
- § 18:18 —Involuntary Loss of or Reduction in Payor’s Income
- § 18:19 —Payor Voluntarily Reducing Own Income
- § 18:20 —Payor Deceased
- § 18:21 —Payor’s Post-Separation Increase in Income
- § 18:22 —Payor—Other Changes
- § 18:23 Variation—Change in Payee’s Circumstances
- § 18:24 —Inflation
- § 18:25 —Payee Cohabiting
- § 18:26 —Remarriage of Payee
- § 18:27 —Payee No Longer Has Primary Responsibility for Children
- § 18:28 —Property Awards to Payee
- § 18:29 —Payee Disabled
- § 18:30 —Payee on Welfare
- § 18:31 —Payee Squandering Assets
- § 18:32 —Payee—Other
- § 18:33 Interim Orders—Pending Variation
- § 18:34 —Variation of Interim Orders
- § 18:35 Variation Ordered—General
- § 18:36 —Variation After Support for Limited Term Expires
- § 18:37 —Change of Mode of Payment
- § 18:38 —Gradual Phasing Out
- § 18:39 —Variation of Lump Sum Awards
- § 18:40 —Variation to Add Lump Sum Awards
- § 18:41 —Discharge of Security
- § 18:42 —Support Order Binding Payor’s Estate
- § 18:43 Effect of Default in Payment in Variation Application
- § 18:44 Retroactive Variation of Support Orders—General
- § 18:45 —Arrears
- § 18:46 —Delay Inducing Belief Arrears Would Not Be Enforced
- § 18:47 —Tax Credits
- § 18:48 Variation—Interference with Parenting Time Rights
- § 18:49 —Consent Orders for Support
- § 18:50 —Suspension of Support Payments
- § 18:51 —Jurisdiction to Override Spousal Support Provisions of Agreements
- § 18:52 —Order Incorporating Spousal Support Provisions of Agreements
- § 18:53 —Order to Dismiss or Terminate Support
- § 18:54 Variation and Rescission of Support Orders—Practice—Evidence
- § 18:55 Variation and Rescission of Spousal Support Orders—Practice—Miscellaneous
- § 18:56 Variation and Foreign Divorces
- § 18:57 Review Proceedings

## Table of Cases

## Index