

TABLE OF CONTENTS

<i>Introduction</i>	xiii
<i>Table of Cases</i>	xv
PART I: PROCEDURE	
1. Rules of Court: Family Law Rules	1
Foundational Rules: Division 1 of the Family Law Rules	2
The Parties to Litigation: Division 2 of the Family Law Rules	3
Part 3: Court Actions (Division 3 of the Family Law Rules)	3
Managing Litigation: Division 4 of the Family Law Rules	4
Disclosure of Information: Division 5 of the Family Law Rules	5
Resolving Issues and Preserving Rights: Division 6 of the Family Law Rules	5
Resolving Claims Without Full Trial: Division 7 of the Family Law Rules	6
Trial: Division 8 of the Family Law Rules	6
Judgments and Orders: Division 9 of the Family Law Rules	6
Service of Documents: Division 10 of the Family Law Rules	7
Appeals: Division 11 of the Family Law Rules	8
2. Disclosure	11
Importance of Disclosure in Domestic Contracts	12
Procedure for Disclosure in Family Law	13
Notice to Disclose (Form FL-17)	13
Notice to Reply to Written Interrogatories (Form FL-16)	13
Affidavit of Records	14
3. Solicitor-Client Relationship — When Does it Begin?	15
Law Society of Alberta Code of Conduct	16
Jurisprudence	17
4. Solicitor-Client Privilege	23
Introduction to Solicitor-Client Privilege	24
General Principles	24
Waiver: General	24
Express Waiver	25

Table of Contents

Implied or Deemed Waiver	25
Implied/Deemed Waiver and Placing Legal Advice or State of Mind Into Issue	26
Consequences of Waiving Privilege	26
5. Affidavits	27
Introduction to Affidavits	28
What an Affidavit Can Contain	28
Who May Swear an Affidavit	29
Exhibits to an Affidavit	29
6. Cross-Examination on an Affidavit	31
Introduction to Cross-Examination on an Affidavit	35
Legislative Authority for Cross-Examination	35
Procedure for Questioning	36
Form of Questioning and Transcript	36
Answers to be Recorded by a Qualified Person	36
Responsibilities of the Questioning Party	37
Responsibilities of the Qualified Person who is Recording the Answers from Questioning	37
Scope of Cross-Examination	37
7. Questioning/Discovery	41
General Principles	43
Questioning Under the Rules	43
Written Questioning	44
Oral Questioning — Part 5	45
General Procedure	45
Appropriate Questions and Objections	46
Continuing Duty to Disclose	48
Undertakings	49
Use of Transcript	49
Notice of Appointment, Allowance, Transcripts and Responsibilities	50
Lawyer's Responsibilities	54
Use of an Interpreter	54
Requiring Attendance for Questioning	55
8. Offers to Settle	57
General Points	58

Table of Contents

Requirements for Formal Offer	58
Offer Must be Genuine	58
Offer Cannot be Conditional on a Matter Beyond Offeree's Control	58
When a Formal Offer Can be Made	58
Timing Suggestions	58
How Long the Formal Offer Remains Open	59
Revocation	59
Effect of Rejection or Counteroffer on Validity of Offer	59
Rule 4.29: Costs Consequences of Formal Offers to Settle	59
Plaintiff Makes Offer and Beats Offer	59
Plaintiff Makes Offer and Fails to Beat Offer	59
Defendant Makes Offer and Beats Offer	59
Defendant Makes Offer and Fails to Beat Offer	60
Onus on Offeror to Prove Offer Beaten	60
Solicitor-Client Costs Will Not Be Doubled	60
Informal Offers to Settle	60
Calderbank Offers Need Clear Language	60
Calderbank Offers Can Carry Double Costs Consequences	61
Accepting Formal Offers	61
Formal Offers Are Confidential	61
9. Applications Within the Course of a Proceeding	63
Application Within the Course of Proceedings	65
Application	65
Form	65
Content	65
Affidavit in Support of the Application	66
Content	66
Time for Making Application	66
Service Requirements: Applications With Notice	66
Applications Commenced by Originating Application ...	66
Applications Served with Commencing Claim Under FLA	66
All Other Applications Within Course of Proceedings	66
Abridging Time for Service	66
Response to an Application	66

Table of Contents

Applications Without Notice (<i>Ex Parte</i>)	67
Procedure for Applications Without Notice	67
Filing Applications and Affidavits	67
Filing Requirements: Additional Preliminary Steps	67
Family Law Practice Note 4: Application Filing Requirements	67
Family Law Practice Note 1: Parenting After Separation Seminar (“PASS”) and Filing Requirements	68
Hearing	68
Ordinary Chambers	68
Family Law Morning Chambers	68
Morning Chambers Procedure	69
Orders: Preparing and Filing	69
Effective Date	69
Form	69
Content	69
Appeals	70
Leave of Court of Queen’s Bench Required to Appeal	70
Deadlines for Filing	70
Provincial Court	70
Form of Application	70
Content	70
Filing	70
Rules for Applications	70
Notice	71
Service	71
Hearing	71
Order	71
Costs	71
10. Trial of an Issue (Severance or Bifurcation)	75
Introduction to Severance	78
Test for Severance	78
Appeal	80
11. Case Management and Dispute Resolution	83
Managing Litigation	91
Responsibilities of the Parties	92

Table of Contents

Court Assistance in Managing Litigation	92
Dispute Resolution By Agreement	92
Judicial Dispute Resolution	97
Family Law Conferences	100
Dispute Resolution in the Family Context	101
12. Child Protection Proceedings	105
In Need of Intervention	108
Factors to be Considered	108
Procedural Rights	108
Intervention Services: Preliminary Matters	110
Penalties for Failing to Report	110
Director Must Investigate Unless Malicious or Unfounded or No Reasonable and Probable Grounds	111
Director May Move Child to Complete Investigation if Necessary	111
Director Determines That Child is in Need of Intervention: Next Steps	111
Emergency Care	111
Agreements	111
Family Enhancement Agreement	111
Custody Agreement	111
Other Agreements	112
Court Orders: Supervision Orders, TGOs, and PGOs	112
Supervision Order	112
Temporary Guardianship Order (TGO)	112
Permanent Guardianship Order (PGO)	113
Duration of TGOs	113
Duration of Permanent Guardianship Agreements and PGOs	113
Review of Supervision Orders and TGOs	113
Apprehension of the Child with Apprehension Order	114
Apprehension of the Child Without Apprehension Order	114
Court Application Made Within 2 Days After Apprehension	114
Custody on Apprehension	115
Initial Custody	115
Notice of Applications: Section 23	115

Table of Contents

Exclusion from Hearing	116
Adjournments	116
General Powers of the Court	116
Disclosure	116
Secure Services	117
Private Guardianship Orders	117
Evidentiary Restrictions	118
Age of Child	118
Right to Appear	118
Maintenance Enforcement	118
Appeals of Orders to Court of Queen’s Bench	119
Administrative Review	119
Confidentiality	120
13. Trials	121
Introduction to Trial Considerations	122
Document Disclosure	122
Expert Reports — Rules 5.34–5.40	123
Offers to Settle — Rules 4.24–4.30	124
Notice to Admit Facts — Rule 6.37 (Form 33)	124
Witnesses — Rule 8.8	125
Other Points to Remember	125
Provincial Court	126
Pleadings	126
Disclosure	126
Expert Reports and Evidence	126
14. Judgments and Orders	127
Introduction to Judgments and Orders	134
The Basics	134
Corrections, Further Orders, Setting Aside, Varying and Discharging Judgments and Orders	137
Correcting Errors or Mistakes	137
Re-Opening a Case — Before a Judgment or Order is Entered	137
Further or Other Order After Judgment or Order Entered . . .	138
Setting Aside, Varying and Discharging Judgments and Orders	139

Table of Contents

Enforcing Judgments and Orders	140
15. Costs	141
Introduction to Costs	150
Overarching Purpose of Costs	150
General Rule	150
Costs Determined in the Context of Family Law Cases are the Same as Costs Determined in Other Litigation	151
Scale of Costs	152
Discretion of the Court	152
Schedule C	154
Solicitor-Client Costs	154
Offers to Settle	157
Informal Offers (Calderbank Offers)	159
Costs Against a Solicitor	160
Advance Payment of Costs	161
Merits	162
Impecuniosity	162
Special Circumstances	163
16. Appeals	165
Introduction to Appellate Review	166
Standard of Review	166
Errors of Fact	166
Errors of Law	167
Fresh/New Evidence	167
Appeals Involving the Rules of Court	168
No Right of Appeal	168
Appeals Only with Permission	168
Appeals from Arbitrations	169
Appeals: Practice and Procedure	170
Electronic Appeals (E-Appeals)	170
Notice of Appeal: Filing	170
Where to File: Rule 14.82(5)	171
Notice of Cross Appeal: Filing	171
Notices of Appeal and Notices of Cross Appeal: Contents and Format	171
Standard Appeals and Fast Track Appeals	171

Table of Contents

Stay of Enforcement	172
Appeal Record	172
Appeal Record: Standard Appeals	173
Appeal Record: Fast-Track Appeals	174
Factums	174
Standard Appeal Factums: Filing	174
Fast-Track Appeals: Filing	175
Factums: Content	175
Factums: Formatting Requirements	176
Factums: Length Requirements	176
Extracts of Key Evidence	176
Extracts of Key Evidence: Format	177
Books of Authorities	177
Books of Authorities: Format	177
Scheduling	178
Scheduling: Standard Appeals	178
Scheduling: Fast-Track Appeal	178
Applications at the Court of Appeal	179
Applications at the Court of Appeal: Format	179
Deciding Applications	179
Specific Applications: Rules	180
Consequences of Delay	181
Mandatory Striking in Event of Delay	181
Restoring an Appeal	182
Deadline for Restoring an Appeal	182
Security for Costs	182
Judgments and Orders	182
Documents: Filing	182
Documents: Formatting	182
Factums	183
Factums Can Affect Costs	183
Costs	183
Sanctions for Failure to Comply with Rules	183
17. Technology in the Courtroom	185
Electronic Hearings: Teleconferences Under the Rules of Court	185

Table of Contents

Use of Technology in the Courtroom During a Trial: Practice Note 4
..... 187

Digital Books of Exhibits 187

Electronic Filing 188

Fax Filing 188

PART II: REGIONAL COURT INFORMATION 189

PART III: SUBSTANTIVE LAW 285

Index 335