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CANADIAN DIVORCE LAW AND PRACTICE

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Canadian Divorce Law and Practice includes digests of thousands of divorce cases organized under 300 specific subjects. In addition, this product features the full text of the *Divorce Act* and other related statutes, sample pleadings and the most commonly used divorce precedents, all relevant provincial rules of practice and all prescribed forms, and extensive commentary on the Spousal Support Advisory Guidelines.

In this release s. 2 [Definitions] has been updated. Two notable cases from the Ontario Court of Appeal address issues of capacity as it applies to an adult child of the marriage.

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Highlights

In *D.F. v. R.W.F.*, 2025 CarswellOnt 2011, 2025 ONCA 129 (Ont. C.A.) the Court of Appeal found that the parties' adult son living with Down Syndrome was a child of the marriage with incapacity was supported by new evidence on appeal. The parenting order made by the lower court was overly restrictive, and the lack of a review process created a risk that might effectively and permanently end the husband's in-person relationship with the son, which was inconsistent with the maximum contact principle. The matter was remitted back to the trial judge to re-craft the parenting order.

In *J.F.R. v. K.L.L.*, 2022 ONSC 5067, 2022 CarswellOnt 12607 (Ont. S.C.J.), reversed 2024 ONCA 520 (Ont. C.A.) the appellate court found that the lower court's presumption as to the parties' adult son who was living with Down Syndrome of incapacity to make his own decisions about his residence, and by denying the son the opportunity and right to representation and to make submissions, was in error in the absence of evidence to establish that the son was unable to withdraw from parental control in the specific sphere of his residential schedule. The finding that the son was a "child of the marriage", and the related parenting order, was set aside.

Other notable cases include:

Where same-sex spouses were married in Canada but now resided in a country that did not recognize same-sex marriage, the parties were left in a legal bind of being unable to obtain a divorce in Canada pursuant to the *Divorce Act*. See *H.Y.C. v. M.K.H.*, 2024 CarswellBC 3127, 2024 BCSC 1942 (B.C. S.C.).

The adult daughter's pregnancy did not in and of itself warrant a finding that the daughter once again became a child of the marriage, but when she could not work for health reasons and became dependent on the wife for the necessities of life, the husband was responsible for assisting in the financial support of the daughter. See *PC v. SV*, 2022 CarswellAlta 2824, 2022 ABKB 644 (A.B. K.B.).