

Index

ADVOCACY IN CUSTODY DISPUTES

- Affidavits and evidence on a motion, **13:10 to 13:14**
- Child as a witness, **13:18**
- Evidence of children, **13:17 to 13:25**
- Questioning witnesses and obtaining disclosure, **13:15, 13:16**
- Rules of evidence and admissibility, **13:3 to 13:9**

ARBITRATION

- Agreements for arbitration regarding future disputes, **17:49 to 17:50**
- Appeals, **17:45 to 17:48**
- Arbitration, **17:2 to 17:50**
- Arbitration agreement, **17:22**
- Arbitration award, **17:34**
- Arbitration legislation, **17:3 to 17:6**
- Arbitrator, **17:13 to 17:19**
- Binding judicial dispute resolution, **17:61 to 17:63**
- Collaborative family law, **17:54 to 17:60**
- Costs, **17:33**
- Enforcement of arbitration award, **17:35 to 17:37**
- Jurisdiction, **17:7 to 17:12**
- Mediation/arbitration, **17:51 to 17:53**
- Resources, **17:64**
- Screening for domestic violence, **17:20, 17:21**
- Setting aside arbitration agreement, **17:23 to 17:25**
- Setting aside arbitration award, **17:38 to 17:41**
- Stay of Proceedings, **17:43, 17:44**
- Varying an arbitration award, **17:42**

ASSESSMENTS

- See also ASSESSOR
- Bias, **5:23 to 5:27**
- Clinical issue, **5:4**
- Cost, **5:23 to 5:27**
- Critique of, **5:29**
- Delay, **5:23 to 5:27**
- Delegation of decision-making, **5:14**

ASSESSMENTS—Cont'd

- Impact on decision, **5:14 to 5:22**
- Implementation of recommendations, **5:30**
- Interim motion and, **5:30**
- Intrusiveness, **5:23 to 5:27**
- Legislation governing, **5:3**
- Order for, **5:3 to 5:13**
- Purpose, **5:2**
- Weight given to, **5:15**

ASSESSOR

- Actions against, **5:28**
- Decision-making jurisdiction, **5:14**
- Recommendations, implementation of, **5:30**
- Role of, **5:2**

BEST INTERESTS OF THE CHILD

- Generally, **6:1**
- Continuity of lifestyle, **6:14 to 6:18**
- Determining, **6:1 to 6:65**
- Disruption of, **6:17**
- Federal, **6:2**
- General principles, **6:10, 6:14**
- Indicia of, **6:15**
- Indicia of stability, **6:15**
- Legislative provisions, **6:2, 6:3**
- Length of, **6:16**
- Maximum contact principle, **6:4**
- Parental alienation, **6:19 to 6:24**
- Parents and extended family, ties to, **6:6**
- Past and current, **6:25**
- Past conduct of parents, **6:25 to 6:27**
- Provincial, **6:2, 6:3**
- Psychological parent, **6:7**
- Separation of siblings, rule against, **6:8**
- Status quo, **6:14 to 6:18**
- Teenage children, **6:12**
- Three-fold concept, **6:1**
- Views and preferences of child, **6:10 to 6:13**
- Violent or abusive, **6:26**

CHILD REPRESENTATION

- Independent counsel, jurisdiction to appoint, **4:9 to 4:19**
- challenges to the appointment of counsel, **4:18**
- parens patriae, jurisdiction, **4:10**
- revoking an order for representation, **4:19**
- statutory provisions to appoint counsel, **4:11 to 4:17**
- Overview, **4:2 to 4:8**
- Role for counsel representing child incapable of instructing, **4:29 to 4:31**
- determining capacity, **4:30**
- proper role for counsel representing incapable child, **4:31**
- Roles for counsel, generally, **4:20 to 4:28**
- advocate, **4:23**
- amicus curiae, **4:21**
- litigation guardian, **4:22**

CONSTITUTIONAL CONSIDERATIONS

- Charter of Rights and Freedoms, **2:4**
- Division of powers, **2:2**

CUSTODY AND ACCESS ORDERS, ENFORCEMENT OF

- Civil contempt, **15:24 to 15:65**
- affidavits and evidence, **15:29**
- cases where found, **15:49 to 15:56**
- cases where not found, **15:57 to 15:65**
- establishing, **15:25**
- general, **15:24**
- jurisdiction of courts to commit for, **15:27**
- practice and procedure, **15:27 to 15:36**
- sanctions and remedies, **15:37 to 15:48**
- sufficiency of notice, **15:28**
- Criminal Code, **15:2 to 15:23**
- criminal contempt, **15:14, 15:15**
- defences, **15:3**
- offences, **15:2**
- parental abduction, **15:2 to 15:13**
- restraining orders, **15:16 to 15:23**
- Divorce Act orders, **10:2, 15:71, 15:72**
- Extra-provincial custody orders, **15:73 to 15:107**
- Alberta, **15:81**
- conflicting, **15:83**
- general, **15:85**

CUSTODY AND ACCESS ORDERS, ENFORCEMENT OF—Cont'd

- Extra-provincial custody orders, **15:73 to 15:107—Cont'd**
- habitual residence, **15:86**
- interim powers of the Court, **15:105 to 15:107**
- legislation, **15:73**
- legislation superseding or varying, **15:85 to 15:95**
- Manitoba, **15:81**
- Nova Scotia, **15:81**
- overriding considerations, **15:96 to 15:104**
- presence, with four other factors, **15:87**
- procedure, **15:74**
- real and substantial connection, **15:88**
- Saskatchewan, **15:81**
- serious harm, **15:96 to 15:104**
- Uniform Act jurisdictions, **15:76 to 15:80**
- Introduction, **15:1**
- Pleadings, striking of, **15:66 to 15:70**
- Striking pleadings, **15:66 to 15:70**

DEFINITIONS

- Access, **1:6**
- Custody, **1:1 to 1:4**
- Guardianship, **1:5**

ENFORCEMENT OF CUSTODY AND ACCESS ORDERS

- See CUSTODY AND ACCESS ORDERS, ENFORCEMENT OF

FAMILY VIOLENCE

- Divorce Act, definition, **1:6**
- Effect of false or unsubstantiated allegations, **18:35**
- Hague Convention, article 13(b) of the, **18:37 to 18:41**
- Introduction, **18:1**
- Legislation, **18:2, 18:3**
- divorce act, new provisions and amendments in the, **18:2**
- provincial and territorial legislation, **18:3**
- Meaning of, **18:4 to 18:11**
- Mediation, **18:36**
- Standard of proof, **18:34**

FAMILY VIOLENCE—Cont’d

- Supervised access, **18:23 to 18:27**
 - court ordered anger management or parenting courses, **18:24**
- Termination of access, **18:28 to 18:33**
- Violence constituting a material change in circumstances, **18:18 to 18:22**
- Violent conduct and ability to parent, **18:12 to 18:17**

HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

- Application in Canada, **16:2**
 - generally, **16:3 to 16:11**
 - child settled in new environment, **16:20**
 - grave risk of harm or intolerable situation, **16:27 to 16:35**
 - objections of children, **16:37 to 16:43**
 - person having care consented or acquiesced to removal or retention, **16:21 to 16:26**
 - “direct judicial communication” defined, **16:53**
 - exceptions to general rule of return, **16:2**
 - generally, **16:1**
 - “child centred approach” to determining, **16:3 to 16:11**
 - circumstances where child need not be returned to, **16:19 to 16:43**
 - “parental intention approach” to determining, **16:3 to 16:11**
 - communication between courts in different jurisdictions, **16:53**
 - costs, **16:52**
 - general procedural issues, **16:44**
 - protection of human rights and fundamental freedoms, **16:36**
- Preservation of rights of access, **16:56**
 - return of children—transition period, **16:55**
 - summary, **16:2**
 - where state is not signatory, **16:57**
 - wrongful removal or retention in breach of custody rights, **16:12 to 16:18**

JURISDICTION

- Assessments and, **5:15**

JURISDICTION—Cont’d

- Divorce Act
 - Generally, **3:1**
 - Amendments, **3:2**
 - Child not Habitually Resident in Canada, **3:14, 3:15**
 - Concurrent Applications, **3:5**
 - Corollary Relief Proceedings, **3:6, 3:7**
 - Enforcement, **3:16, 3:17**
 - Habitual Residence, **3:3, 3:4**
 - Territorial Issues, **3:12, 3:13**
 - Transferring Jurisdiction, **3:10, 3:11**
 - Variation Proceedings, **3:8, 3:9**
- Provincial law, **3:19 to 3:19.100**
 - Generally, **3:19, 3:19.05**
 - Children’s Law Act, **3:19.65 to 3:19.85, 3:19.95**
 - Common Law rules, **3:19.45 to 3:19.60**
 - Declining jurisdiction, **3:19.35, 3:19.40**
 - Habitual Residence, **3:19.1, 3:19.15**
 - Presence, **3:19.20**
 - Real and Substantial Test, **3:19.90**
 - Reciprocal Recognition, **3:19.100**
 - Serious Harm, **3:19.25, 3:19.30**

MOBILITY ISSUES

- Generally, **7:1**
- British Columbia’s Family Law Act, **7:3 to 7:8**
- Custody application, **7:9**
 - initial, **7:9**
 - variation, **7:9**
- Factors to consider, **7:20 to 7:31**
- Gordon v. Goertz, **7:2**
 - judgment in, **7:2**
 - material change, **7:2**
- Interim mobility hearing, **7:10 to 7:19**
- Joint custody, **7:32 to 7:40**

ORDERS FOR PARENTING TIME

- Access, definition, **9:4 to 9:7**
- Access, supervised, **9:21 to 9:29**
- Access and adoption, **9:8 to 9:18**
- Access provisions, **9:1**
 - reasonable access, **9:19, 9:20**
 - supervised access, **9:21 to 9:29**
- Access rights, **9:4 to 9:7**
 - decision making, **9:6**
 - information, **9:5**
 - visitation, **9:4**
- Alternative dispute resolution, **9:8 to 9:18**

ORDERS FOR PARENTING TIME**—Cont'd**

- Best Interest of the Child, **1:5**
- Contact Order, **1:3**
 - age of child, **9:19, 9:20**
 - health, **9:32**
 - interference with parent-child relationship, **9:37 to 9:42**
 - lifestyle, **9:21 to 9:29**
 - limited access, **9:52 to 9:61**
 - parental conduct, **9:21 to 9:29**
 - religious and cultural upbringing, **9:34**
 - separation agreements, **9:36**
 - supervised access, **9:52 to 9:61**
 - termination of access, **9:62, 9:63**
 - wishes of child, **9:43 to 9:49**
 - wishes of custodial parent, **9:50, 9:51**
- Guardianship, definition, **1:5**
- Interim Parenting Orders, **8:6 to 8:18**
- Nature of access rights, **9:1**
- Non-parents, access by, **9:8 to 9:18**
- Parenting Orders, **1:2, 1:8**
- Parenting Plans, **1:4, 8:4 to 8:5**
- Protection proceedings, and access, **9:19 to 9:63**
- Rights and access, **9:4 to 9:7**

PRACTICE AND PROCEDURE**ALBERTA**

- appeals, generally, **19:16**
- appeals from interlocutory orders, **19:9**
- assessments, **19:10**
- children, representation for, **19:11**
 - child as witness, **19:12**
- collaborative process, duty to inform client, **19:7**
- costs, **14:5**
- court jurisdiction, **19:2**
- Divorce Act, commencement of proceedings, **19:4**
- Divorce Act, rules governing, **19:3**
- duty to inform client, **19:7**
- Family Law Act, commencement of proceedings, **19:6**
- Family Law Act, rules governing, **19:5**
- interlocutory orders, appeals from, **19:9**
- interlocutory proceedings, **19:8**
- mediation, duty to inform client, **19:7**
- overview, **19:1**
- pre-trials, **19:14**

PRACTICE AND PROCEDURE**—Cont'd****ALBERTA—Cont'd**

- proceedings, commencement under Divorce Act, **19:4**
- proceedings, commencement under Family Law Act, **19:6**
- representation for child, **19:11**
 - child as witness, **19:12**
- rules, Divorce Act, **19:3**
- rules, Family Law Act, **19:5**
- sexual abuse, allegations of, **19:13**
- trial, **19:15**

MANITOBA

- affidavits, cross-examinations on, **21:4**
- appeals, **21:13**
- assessments, **21:6**
- Court of Queen's Bench, Family Division, **21:1 to 21:14**
 - commencement of proceedings, **21:2**
 - overview, **21:1**
 - pre-trial conference, **21:10**
- cross-examinations on affidavits, **21:4**
- discovery, **21:9**
- enforcement of orders, **21:14**
- expert witnesses, **21:8**
- interlocutory proceedings, **21:3**
- mediation, **21:5**
- medical reports, **21:7**
- orders, **21:12**
- pre-trial conference, **21:10**
- wishes of child, **21:11**

NEW BRUNSWICK

- generally, **22:1, 22:28**
- court, **22:3**
- court ordered evaluations, **22:6**
- final order
 - appeal, **22:26**
 - variance, **22:27**
- issues for adjudication, **22:7**
- jurisdiction, **22:4**
- legislation, **22:2**
- mediation and out of court settlement, **22:5**
- parties to proceedings, **22:7**
- proceedings in region with case management model, **22:9 to 22:18**
 - appeals from interim orders of a master, **22:16**

PRACTICE AND PROCEDURE

—Cont'd

- NEW BRUNSWICK—Cont'd
 - proceedings in region with case management model, **22:9 to 22:18**
 - Cont'd
 - applications under the case management model, **22:10**
 - components of the case management model, **22:9**
 - ex parte orders, **22:14**
 - first court appearance, **22:11**
 - hearing, **22:18**
 - interim orders, **22:12**
 - appeal, **22:16**
 - variance, **22:13**
 - orders that require a judge, **22:17**
 - waiving a case conference, **22:15**
 - proceedings in region without case management model, **22:19 to 22:25**
 - applications, **22:19**
 - ex parte motions, **22:23**
 - hearing/trial, **22:25**
 - interim orders, **22:21**
 - appeal, **22:24**
 - variance, **22:22**
 - petitions, **22:20**
 - rules governing proceedings, **22:8**
- NEWFOUNDLAND
 - appeals, **23:60 to 23:62**
 - assessments, **23:39 to 23:45**
 - authority, **23:2**
 - child representation, **23:46, 23:47**
 - costs, **14:11**
 - courts, **23:3 to 23:7**
 - extra-judicial recourses, **23:19, 23:20**
 - jurisdiction, **23:13 to 23:18**
 - overview, **23:1**
 - parties, **23:31 to 23:33**
 - pleadings and forms, **23:34 to 23:38**
 - procedure, **23:8 to 23:12**
 - proceedings, **23:24 to 23:30**
 - time limitations, **23:21 to 23:23**
 - trials, **23:48 to 23:50**
 - witnesses, **23:51 to 23:56**
- NOVA SCOTIA
 - choice of forum, **25:2**
 - costs, **14:14**
 - jurisdiction, **25:2**

PRACTICE AND PROCEDURE

—Cont'd

- NOVA SCOTIA—Cont'd
 - Supreme Court (Family Division), **25:3 to 25:33**
 - Supreme Court (outside Halifax and Cape Breton), **25:47 to 25:53**
- ONTARIO
 - costs, **14:19 to 14:36**
 - court, **27:3**
 - legislation, **27:2**
 - Ontario Court of Justice, proceedings in, **27:9 to 27:30**
 - overview, **27:1**
 - rules, **27:4**
 - Superior Court of Justice, proceedings in, **27:5 to 27:8**
- SASKATCHEWAN
 - contempt, **30:4**
 - costs, **14:17**
 - discovery, **30:7**
 - experts, **30:5**
 - interlocutory appeal, **30:6**
 - joint custody, **30:9**
 - mediation, **30:5**
 - overview, **30:1 to 30:3**
 - pre-trial settlement, **30:10**
 - settlement, pre-trial, **30:10**
 - trial, **30:11, 30:12**
- REPRESENTATION OF THE CHILD
 - See CHILD REPRESENTATION
- VARIATION OF PARENTING AND CONTACT ORDERS
 - Circumstances, change in, **11:21 to 11:44**
 - aging and best interests of child, **11:38**
 - change in employment, **11:23**
 - health of child, **11:40**
 - parental conduct and health, **11:27 to 11:35**
 - parental interference and alienation, **11:36**
 - relocation of parent, **11:41 to 11:44**
 - remarriage, cohabitation and new family unit, **11:21**
 - wishes of child, **9:43 to 9:49, 11:25**
 - Interim variation, final custody orders, **11:45, 11:45.50**
 - Jurisdiction, **3:20 to 3:45, 11:2, 11:3**
 - Divorce Act, **1:7, 10:2, 11:2**

VARIATION OF PARENTING AND CONTACT ORDERS—Cont'd
Jurisdiction, **3:20 to 3:45, 11:2, 11:3**
—Cont'd
provincial legislation, **3:20 to 3:45, 11:3**
Material change as prerequisite, **11:4 to 11:13**
Merits of application, **11:14 to 11:20**
generally, **11:14**

VARIATION OF PARENTING AND CONTACT ORDERS—Cont'd
Merits of application, **11:14 to 11:20**
—Cont'd
conduct, **11:17**
parental contact, **11:19**
status quo, **11:15**
Overview, **11:1**
Varying interim orders, **11:46**