

TABLE OF CONTENTS

Part I Divorce Act

| | |
|---------------|---|
| Overview..... | 1 |
| Chapter 1 | Introduction and Application of the Statutes..... 5 |
| | 1.1 Introduction..... 9 |
| | 1.2 Application of Statutes..... 11 |
| | 1.3 Grounds for Entitlement to Spousal Support..... 11 |
| Chapter 2 | Jurisdiction..... 13 |
| | 2.1 Jurisdiction in Corollary Relief Proceedings..... 13 |
| | 2.2 Jurisdiction in Variation Proceedings..... 14 |
| | 2.3 Jurisdiction to Make Support Orders – Case Law..... 14 |
| | 2.4 Constitutional Issues..... 19 |
| Chapter 3 | Parties..... 27 |
| | 3.1 Spouses or Former Spouses..... 27 |
| Chapter 4 | Interim and Indefinite Support..... 29 |
| | 4.1 General..... 29 |
| | 4.2 Interim Support..... 29 |
| | 4.2.1 Jurisdiction to Grant Interim Relief..... 30 |
| | 4.2.2 General – Case Law..... 32 |
| | 4.2.3 Evidence and Disclosure..... 49 |
| | 4.2.4 Relationship of Interim Support to Permanent Support..... 51 |
| | 4.2.5 Defences – Delay in Application for Interim Support..... 51 |
| | 4.2.6 Interim Support – Miscellaneous..... 57 |
| | 4.3 Indefinite Support..... 60 |
| Chapter 5 | Factors..... 63 |
| | 5.1 General..... 63 |
| | 5.2 Means and Needs of Party from Whom Support is Sought.. 66 |
| | 5.2.1 Post-separation Increases in the Payor Spouse’s Income – General..... 77 |
| | 5.2.2 Post-separation Increases in the Payor Spouse’s Income – Increase in Support Granted or Time-limited Support Extended..... 79 |
| | 5.2.3 Post-separation Increases in the Payor Spouse’s Income – Increase in Support Not Granted..... 85 |
| | 5.3 Means and Needs of Party Seeking Support..... 89 |
| | 5.4 Length of Relationship..... 103 |
| | 5.5 Functions Performed by Each Spouse During Cohabitation.. 109 |
| | 5.6 Order, Agreement, or Arrangement Relating to Support..... 113 |
| Chapter 6 | Objectives..... 147 |
| | 6.1 Objectives – General..... 147 |
| | 6.2 Economic Advantages or Disadvantages Arising from the Marriage or its Breakdown..... 154 |

TABLE OF CONTENTS

| | | | |
|------------|--------|--|-----|
| | 6.3 | Financial Consequences Arising From the Care of Any Child of the Marriage | 184 |
| | 6.4 | Economic Hardship of the Spouses Arising From the Breakdown of the Marriage..... | 191 |
| | 6.5 | Promotion of Economic Self-Sufficiency | 206 |
| Chapter 7 | | Terms and Conditions..... | 225 |
| | 7.1 | General..... | 225 |
| | 7.1.1 | Retroactive Spousal Support..... | 225 |
| | 7.2 | Term-limited or Indefinite Support..... | 231 |
| | 7.2.1 | Support for a Definite Period..... | 231 |
| | 7.2.2 | Support for an Indefinite Period..... | 239 |
| | 7.2.3 | Support after Termination of Support Order..... | 247 |
| | 7.2.4 | Terms and Conditions – Support Until Specified Event..... | 247 |
| | 7.2.5 | Terms and Conditions – Specific Awards of Support..... | 249 |
| | 7.3 | Spousal Support – Method of Payment – Lump Sum or Periodic | 260 |
| | 7.3.1 | Lump Sum – Jurisdiction..... | 262 |
| | 7.3.2 | Lump Sum – General..... | 263 |
| | 7.3.3 | Lump Sum – Granted – Examples..... | 268 |
| | 7.3.4 | Lump Sum – Refusal of Awards..... | 282 |
| | 7.3.5 | Spousal Support – “To Secure or Pay”..... | 287 |
| | 7.3.6 | Lump Sum – In Addition to Periodic Sums | 292 |
| | 7.3.7 | Lump Sum – Calculations | 294 |
| | 7.3.8 | Miscellaneous | 297 |
| | 7.4 | Review Terms | 298 |
| | 7.5 | Support Order as an Obligation of the Payor’s Estate | 298 |
| Chapter 8 | | Determination of Income | 299 |
| Chapter 9 | | Other Issues..... | 311 |
| | 9.1 | Disclosure | 311 |
| | 9.1.1 | Case Law | 313 |
| | 9.2 | Delay in Bringing Application..... | 325 |
| | 9.3 | Relationship between Spousal Support and Child Support ... | 329 |
| | 9.4 | Effects of Property on Spousal Support..... | 332 |
| | 9.5 | Conduct..... | 344 |
| | 9.6 | Income Tax Issues..... | 349 |
| | 9.7 | Nominal Awards | 352 |
| | 9.7.1 | General..... | 352 |
| | 9.7.2 | Case Law | 353 |
| | 9.8 | Retroactive Support..... | 355 |
| Chapter 10 | | Variation and Review..... | 357 |
| | 10.1 | Variation – General..... | 360 |
| | 10.2 | Variation and Delay in Enforcement..... | 363 |
| | 10.3 | Variation – Change in Circumstances | 364 |
| | 10.3.1 | Change of Circumstances – Onus of Proving Change | 380 |
| | 10.3.2 | Change of Circumstances – Facts Known at Time of Order | 381 |

TABLE OF CONTENTS

| | | |
|---------|--|-----|
| 10.3.3 | Change in Payor’s Circumstances..... | 384 |
| 10.3.4 | Change in Payee’s Circumstances..... | 408 |
| 10.4 | Interim Orders | 427 |
| 10.5 | Variation Ordered | 432 |
| 10.6 | Effect of Default in Payment in Variation Application | 442 |
| 10.7 | Retroactive Variation of Support Orders..... | 443 |
| 10.7.1 | General..... | 443 |
| 10.7.2 | Retroactive Variation of Support Orders – Arrears | 447 |
| 10.7.3 | Delay Inducing Belief Arrears Would not be Enforced | 451 |
| 10.7.4 | Retroactive Variation of Support Orders – Tax Credits..... | 461 |
| 10.8 | Variation – Interference with Access Rights..... | 462 |
| 10.9 | Variation – Consent Orders for Support | 462 |
| 10.10 | Variation – Suspension of Support Payments | 464 |
| 10.11 | Variation – Jurisdiction to Override Domestic Contracts – Radical Change and Causal Connection..... | 464 |
| 10.12 | Variation – Order Incorporating Spousal Support Provisions of Agreements | 465 |
| 10.13 | Variation – Order to Dismiss or Terminate Support | 473 |
| 10.14 | Variation and Rescission of Support Orders | 475 |
| 10.15 | Variation and Foreign Divorces..... | 477 |
| 10.16 | Variation Order by Affidavit..... | 477 |
| 10.16.1 | General..... | 478 |
| 10.17 | Review Proceedings..... | 478 |

Part II

Spousal Support Advisory Guidelines

| | | |
|-----------------------|-------------------------------------|-----|
| Explanatory Note..... | 497 | |
| Chapter 11 | Introduction | 499 |
| | 11.1 Entitlement | 499 |
| | 11.2 Application | 500 |
| | 11.3 Income | 508 |
| Chapter 12 | Without Child Support Formula | 513 |
| | 12.1 Quantum..... | 514 |
| | 12.2 Duration | 521 |
| Chapter 13 | With Child Support Formula | 527 |
| | 13.1 Basic Formula: Quantum..... | 528 |
| | 13.2 Basic Formula: Duration | 535 |
| | 13.3 Shared Custody..... | 538 |
| | 13.4 Split Custody..... | 540 |
| | 13.5 Step-Children | 540 |
| | 13.6 Custodial Payor..... | 541 |
| | 13.7 Adult Children | 543 |

TABLE OF CONTENTS

| | | |
|------------|---|-----|
| Chapter 14 | Using the Ranges..... | 545 |
| | 14.1 Effect of property award, exempt or excluded assets, debts, if any..... | 545 |
| | 14.2 Compensatory or non-compensatory basis for support; longer marriages under with child formula; recipients limited income; children’s age, number and needs; standard of living; payor’s need and ability to pay; net income; need to preserve work incentive; self-sufficiency; net disposable income | 549 |
| | 14.3 Other | 561 |
| Chapter 15 | Restructuring..... | 565 |
| | 15.1 Front-end Loading..... | 566 |
| | 15.2 Extending Duration..... | 569 |
| | 15.3 Lump Sum | 570 |
| Chapter 16 | Ceilings and Floors | 575 |
| | 16.1 Ceilings..... | 575 |
| | 16.2 Floors..... | 590 |
| Chapter 17 | Exceptions..... | 593 |
| | 17.1 General..... | 543 |
| | 17.2 Compelling Financial Circumstances in the Interim Period... .. | 596 |
| | 17.3 Debt Payment | 598 |
| | 17.4 Prior Support Obligations..... | 601 |
| | 17.5 Illness and Disability | 602 |
| | 17.6 Compensatory Exception in Short Marriages Without Children..... | 611 |
| | 17.7 Property Division, Reapportionment of Property | 613 |
| | 17.8 Basic Needs/Hardship: Without Child Support, Custodial Payor Formulas..... | 619 |
| | 17.9 Non-taxable Payor Income..... | 620 |
| | 17.10 Non-primary Parent to Fulfil Parenting Role under the Custodial Payor Formula..... | 621 |
| | 17.11 Special Needs of Child | 623 |
| | 17.12 Small Amounts, Inadequate Compensation under the With Child Support Formula..... | 624 |
| | 17.13 Other Grounds for Exception..... | 625 |
| Chapter 18 | Variation and Review..... | 627 |
| | 18.1 Variation | 628 |
| | 18.2 Review..... | 633 |
| Chapter 19 | Judicial Reception of the SSAG | 635 |
| | 19.1 Observations of the SSAG Authors..... | 635 |
| | 19.2 Review of Appellate Decisions Dealing with the <i>Spousal Support Guidelines</i> | 636 |
| | 19.2.1 Chart..... | 636 |
| | 19.2.2 SSAG Commentary: Appellate Decisions mid-2008 to mid-2013 | 637 |
| | 19.2.3 Cases..... | 644 |

TABLE OF CONTENTS

| | | |
|-------------|--|-----|
| Chapter 20 | Retroactive Support and the SSAG | 663 |
| | 20.1 General..... | 663 |
| | 20.2 Retroactive Spousal Support for the Interim Period..... | 665 |
| | 20.3 Variation Applications..... | 667 |
| | 20.4 Separation Agreement Set Aside..... | 668 |
| | 20.5 Tax Issues and Lump Sum Retroactive Awards..... | 669 |
| Appendix 1 | Divorce Act (selected sections) | 671 |
| Appendix 2 | Spousal Support Advisory Guidelines, July 2008..... | 683 |
| Index | | 819 |