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EVIDENCE IN FAMILY LAW

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Release No. 7, September 2026

This unique resource is structured to follow the evolution of a family law case through trial and appeal and provides detailed analysis regarding how to best obtain, preserve and present evidence. It also examines specialized areas of family law such as Charter litigation and child protection proceedings, looking at how to establish the proper evidentiary framework.

What's New in this Update

This release includes updates to Appendix IF (Issues in Focus) and Appendix WPJ (Words and Phrases).

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Highlights

This release includes the following updates:

- **Appendix IF: Issues in Focus—**§ IF:4. Is a party obligated to answer incriminating questions under the Canada Evidence Act in a civil (family law) proceeding? TVA – Ontario – Aug 1, 2025
- **Appendix IF: Issues in Focus—**§ IF:6. Is there a separate type of privilege which attaches to mediation? TVA – British Columbia – March 1, 2026
- **Appendix IF: Issues in Focus—**§ IF:9. Can an assessor in a family law matter usurp the function of the trial judge as a finder of fact? TVA – Ontario – January 1, 2026
- **Appendix IF: Issues in Focus—**§ IF:10. Is there an appropriate technique to be used by an assessor in family law matters? TVA – Ontario – January 1, 2026
- **Appendix IF: Issues in Focus—**§ IF:37. How does a court interpret whether an individual is under-employing him/herself to the extent that income will likely be imputed to him/her for spousal support purposes? TVA – Ontario – Aug 1, 2025
- **Appendix WPJ: Words and Phrases—§ WPJ:420.50—Power—**Rule 9-1(8) [of the Supreme Court Family Rules, B.C. Reg. 169/2009] specifically permits a party who has received a list of document and believes that the list should include additional documents or classes of documents to make written demand for same provided that the documents or class of documents are (a) within the listing party's possession, power or control and (b) relate to any or all matters in question in the family law case. . .”Power”, as that term is used in Rules 9-1(8) and (11), has consistently been given a meaning broader than control . . . Despite the broad definition of “power”, a party cannot, under these Rules, be required to create documents that do not exist. . . : *Barnes-Morrison v. Kolias*, 2026 CarswellBC 341, 2026 BCSC 180 (S.C.) Hardwick J. at paras. 14, 16, 17
- **Appendix WPJ: Words and Phrases—§ WPJ:497.50—Similar Fact Evidence—**Similar fact evidence is evidence that involves inferences about the conduct of a party based on their conduct on other occasions: . . .: *Fleury v. Budd*, (2025), 2025 CarswellBC 3144 (BCSC), J. Hughes J. at para. 102
- **Appendix WPJ: Words and Phrases—§ WPJ:77.50—Collateral Facts—**Rule The collateral facts rule is an established exclusionary rule that prohibits calling evidence solely to contradict a witness on a collateral fact: . . . However, the collateral facts rule is not an absolute exclusion. Where the benefits of the collateral facts outweigh the negative impact on the trial process, parties should be allowed to

pursue the issue: . . . *Fleury v. Budd*, (2025), 2025 CarswellBC 3144 (BCSC), J. Hughes J. at para. 100, 101