

Index

ACCOUNTANTS. *See* FORENSIC EVIDENCE

ACTUARIES. *See* FORENSIC EVIDENCE

ADMISSIBILITY ISSUES. *See also* EXCLUSIONARY ISSUES

business records, 1:50.30.60

expert testimony, generally, 5:20.10

forensic evidence, 6:80.10

fresh evidence. *See* FRESH EVIDENCE IN FAMILY LAW ARBITRATION;
FRESH EVIDENCE ON APPEAL

hearsay. *See* HEARSAY

medical reports, 1:20.20

party-retained experts. *See* EXPERT EVIDENCE

ADMISSIONS, 2:80, 9:40.20

ADVERSE INFERENCES, 7:40.30

ADVERSE INTEREST

personal diaries/cards of third parties, admissibility, 8:110

AFFIDAVIT EVIDENCE

children's. *See* CHILDREN'S EVIDENCE

motion for further and better affidavit of documents, 7:30.30

motions, on, 2:70.10

provincial expert evidence provisions, ch. 6, App.

trial, at, 2:90.30

ALBERTA

expert evidence provisions, ch. 6, App. (Alta.)

new rules of court, ch. 11.1

APPEALS. *See* FRESH EVIDENCE ON APPEAL

ASSESSMENTS

children's evidence. *See* CHILDREN'S EVIDENCE

generally. *See* EXPERT EVIDENCE

BRITISH COLUMBIA

expert evidence provisions, ch. 6, App. (B.C.)

BURDEN OF PROOF. *See* CHARTER LITIGATION

BUSINESS RECORDS. *See* EVIDENCE ACTS, PROVINCIAL; HEARSAY
– exceptions to rule

BUSINESS VALUATION. *See* FORENSIC EVIDENCE

CANADIAN CHARTER OF RIGHTS AND FREEDOMS. *See* CHARTER
LITIGATION

CHARTER LITIGATION

burden and standard of proof, 12:40

 justifying limitation, 12:40.20

 proving breach, 12:40.10

 case study (*Gosselin v. Quebec (Attorney General)*), 12:40.10.10

 remedy, 12:40.30

 case studies, 12:40.30.10

R. v. Carosella, 12:40.30.10

Schachter v. Canada, 12:40.30.10

Charter breach, identifying, 12:10, 12:20, 12:40.10

discrimination, evidence re, 12:60

equality claim, 12:20

evidence at first instance, 12:30

 case study re (A. (A.) v. B. (B.)), 12:30.10

 sufficiency of record, 12:30.10

expert evidence, 12:60, 12:60.20, 12:80, Sch. B

family law and, 12:70

forms of evidence, 12:60

framework of Charter claim, 12:20

generally, 12:10, 12:70, 12:80

life, liberty and security of person claim, 12:20

marriage, common law definition

 evidence, 12:60.10

 case study (*Halpern v. Toronto (City)*), 12:60.10

practise and, 12:10

remedy issue, 12:20, 12:40.30

reported cases, chart re, 12:80, Sch. A

S.C.C. attitude to evidence, 12:10

social science evidence, 12:60, 12:60.30

time limitation issue, 12:20

types of evidence, 12:50

 adjudicative facts, 12:50.10

 legislative facts, 12:50.20

CHILD PROTECTION HEARINGS. *See also* EXPERT EVIDENCE

apprehensions, 11:20

motions for summary judgment —

 genuine issue for trial, 11:40.20

INDEX

CHILD PROTECTION HEARINGS — *continued*

motions for summary judgment — *continued*
test, 11:40.10
overview, 11:10, 11:10.20.10, 11:10.20.40
duty to act fairly, 11:10.20.30
evidence, general principles, 11:10.20.20
temporary care and custody hearings, 11:30
“credible and trustworthy in the circumstances”, 11:30.40
person having charge, 11:30.10
status review proceedings, 11:30.50
test, temporary care hearing, 11:30.20
variation, temporary care order, 11:30.30
trial —
burden of proof, 11:50.10
business records, 11:50.60
children’s statements, 11:50.70
expert assessments, 11:50.80
society staff as expert witnesses, 11:50.80.10
general hearsay exceptions, 11:50.40
informality provisions, 11:50.40
openness orders: required evidence, 11:50.30
past parenting evidence, 11:50.50
res judicata/issue estoppel, 11:50.50.20
section 50(1) CFSA, 11:50.50.10
section 50(1), 11:50.50.30
statutory exception to the hearsay rule, 11:50.50.30
reverse onus, 11:50.20

CHILDREN’S EVIDENCE

affidavits —
child’s, 4:20.30
clinical letters, reports/notes attached to, 4:20.40
hearsay evidence in, 4:20.20
amicus curiae, 4:50.70
assessment reports, 4:20.60
child’s communication capacity, psychological research re, 4:10.40
child’s legal capacity to testify, 4:10.50
child’s notes —
categories of, 4:20.50
evidentiary force of, 4:20.50
privacy interest, 4:20.50
child’s participation rights, 4:10.20
child’s wishes and preferences, 4:10.30
children’s statements, child protection hearings, 11:50.70
“common sense approach” to, 4:10.50

CHILDREN'S EVIDENCE — *continued*

- communication of evidence, capacity re, 4:10.50
- court discretion, 4:10.50, 4:30.50
- generally, 4:10.10, 4:80
- hearsay evidence in affidavit, 4:20.20
- interim applications, clinical letters, reports/notes, 4:20.40
- judge's chambers, testimony in, 4:60
- motions —
 - contempt motions, 4:20.70
 - evidence on, 4:20.10
- practical considerations re child's testimony, 4:70
- pre-trial evidence, 4:20
- Quebec Family Law, 11.2:40
 - best interests of child, 11.2:40.10.20
 - capacity of child to testify, testimony of a child, 11.2:40.10.30
 - cross-examination, 11.2:40.10.40
 - definition of maturity, 11.2:40.10.30
 - practical aspects of child's testimony, testimony of a child, 11.2:40.10.50
 - role of child's attorney, 11.2:40.20
 - court of appeal trilogy, 11.2:40.20.10
 - testimony of a child, 11.2:40.10
- sworn vs. unsworn evidence, 4:10.50
- third parties, child's evidence through, 4:50
 - amicus curiae*, 4:50.70
 - counsel for child, 4:50.60
 - hearsay and state of mind, 4:50.20
 - hearsay related through another witness, videotape, etc., 4:50.10
 - mental health professional, testimony of, 4:50.50
 - Office of the Children's Lawyer, 4:50.60
 - video and audiotape, 4:50.40
 - voir dire, 4:50.20, 4:50.30
- trial, at, 4:30
 - accommodations to child, 4:40
 - age of child, 4:30.60
 - child's ability to communicate, assessment of, 4:30.80
 - child's understanding of nature of oath, assessment of, 4:30.70
 - closed-circuit television, 4:40.20
 - court's discretion, 4:30.50
 - cross-examination of child, 4:40.40
 - factors re receiving evidence, 4:30.20
 - information source for court, 4:30.40
 - legislative reforms, 4:40.10
 - methods of bringing evidence before court, 4:30.10
 - support person to child, 4:40.30
 - third parties. *See* third parties, child's evidence through, *supra*

INDEX

CHILDREN'S EVIDENCE — *continued*

trial, at — *continued*

 timing of method decision, 4:30.30

U.N. Convention on the rights of the Child, 4:10.20

Voice of the Child Report, 4:10.35

COUNSEL, ROLE OF

amicus curiae, 4:50.70

evidence gathering. *See* FORENSIC EVIDENCE

Office of the Children's Lawyer, 4:50.60

DISCLOSURE

forensic evidence, 6:60.50

inadvertent disclosure, discretion re preservation of privilege, 8:30.10.40

non-disclosure of assets/income determination, 3:60.30

records of assessor, 5:40.30

rules re. *See* FAMILY LAW RULES (ONTARIO) or FAMILY LAW RULES (ALBERTA)

DISCOVERY. *See* ELECTRONIC DISCOVERY

DIVORCE, 2:100

ELECTRONIC

discovery. *See* ELECTRONIC DISCOVERY

recording evidence, 2:90.30

records, 1:40

ELECTRONIC DISCOVERY

costs of production, 3:30.50

deleted information, 3:30.10

“documents”, meaning of, 3:10.10

electronic preservation notice, 3:50.10

electronic records, discoverability list, 3:10.30

examinations for discovery, 3:50.20

family law cases re, 3:60.20

 non-disclosure of assets/income determination, 3:60.30

Family Law Rules and, 3:60.10

form of production, 3:20

generally, 3:10, 3:70

hard drive, court-ordered production, 3:10.20

litigation hold, 3:50.10

metadata, 3:10.20, 3:30.20

non-parties, production from, 3:60.40

Ontario Guidelines to e-discovery, 3:40.10

practical advice, 3:50

privilege re production, 3:30.40

ELECTRONIC DISCOVERY — *continued*

- problems re, generally, 3:30
- Rules of Civil Procedure vs. Family Law Rules, 3:60.10
- Sedona Conference, 3:10.20
- Sedona Principles re managing e-discovery, 3:40
- sources of electronic records, 3:10.20
- spoliation and preservation, 3:30.30
 - Canadian approach to, 3:30.30.10
 - sanctions, 3:30.30.20

EVIDENCE

- admissibility. *See* ADMISSIBILITY ISSUES
- affidavit. *See* AFFIDAVIT EVIDENCE
- Charter litigation. *See* CHARTER LITIGATION
- children's. *See* CHILDREN'S EVIDENCE
- electronic. *See* ELECTRONIC DISCOVERY
- exclusion. *See* EXCLUSIONARY ISSUES
- expert. *See* EXPERT EVIDENCE
- forensic. *See* FORENSIC EVIDENCE
- fresh. *See* FRESH EVIDENCE IN FAMILY LAW ARBITRATION; FRESH EVIDENCE ON APPEAL
- obtaining. *See* FORENSIC EVIDENCE; TRIALS, FAMILY LAW
- opinion. *See* OPINION EVIDENCE
- Quebec. *See* EVIDENCE ACTS, PROVINCIAL
- rules. *See* FAMILY LAW RULES (ONTARIO) or FAMILY LAW RULES (ALBERTA)
- statutes re. *See* EVIDENCE ACTS, PROVINCIAL

EVIDENCE ACTS, PROVINCIAL

- business records, 1:50
 - Ares v. Venner*, effect of, 1:50.20
 - "business", defined, 1:50.30.10
 - common law, at, 1:50.10
 - hearsay, law re, 1:50.10, 1:50.20
 - "in the usual and ordinary course of business", 1:50.30.30
 - lack of motive to misrepresent, 1:50.30.40
 - negative inferences, 1:50.30.70
 - "records" defined, 1:50.30.10
 - regularity and contemporaneity, 1:50.30.20
 - requirements re admissibility, 1:50.30.60
 - statutory provisions re, 1:50.30
- communications made during marriage, privilege re, 1:10
- electronic records, 1:40
- generally, 1:05
- heirs, actions by/against, 1:30

INDEX

EVIDENCE ACTS, PROVINCIAL — *continued*

- medical reports, 1:60
 - all reports to be produced, 1:60.20
 - cross-examination, right of, 1:60.60
 - election, 1:60.30
 - hearsay in, 1:60.50
 - medical reports no expert reports, 1:60.40
 - notice, 1:60.70
 - service requirements re testimony, 1:60.80
 - statutory provisions re, 1:60.10
- opinion evidence, limitation on, 1:20
 - leave, granting of, 1:20.40
 - leave requirements, 1:20.30
 - medical reports, admissibility, 1:20.20
 - per trial vs. per fact in issue, 1:20.10
- provisions, table of, ch. 6, App.
- Quebec, ch. 11.2
 - children, 11.2.40
 - best interests of child, 11.2:40.10.20
 - capacity of child to testify, testimony of a child, 11.2:40.10.30
 - court of appeal trilogy, 11.2:40.20.10
 - cross-examination, 11.2:40.10.40
 - definition of maturity, 11.2:40.10.30
 - practical aspects of child's testimony, testimony of a child, 11.2:40.10.50
 - role of child's attorney, 11.2:40.20
 - testimony of a child, 11.2:40.10
 - expert evidence, 11.2:60
 - courts not bound, 11.2:60.10
 - probative value of court-appointed expert, 11.2:60.20
 - probative value of jointly appointed expert, 11.2:60.20
 - foundations, 11.2:10
 - generally, 11.2:20
 - illegally obtained evidence, 11.2:50
 - authenticity of recordings, 11.2:50.10
 - breach of fundamental rights, 11.2:50.20.10
 - bringing the administration of justice into disrepute, 11.2:50.20.20
 - circumstances under which obtained, 11.2:50.20
 - principle of proportionality, 11.2:30
 - principle of reasonableness, 11.2:30
- EXCLUSIONARY ISSUES.** *See also* ADMISSIBILITY ISSUES
 - adultery, evidence re, 8:70
 - personal diaries/cards of third parties (obtained by adverse interest parties without consent), admissibility, 8:110

EXCLUSIONARY ISSUES — *continued*

polygraph evidence, admissibility of, 8:100
privilege. *See* PRIVILEGE
video/audio tape-recorded conversation, admissibility, 8:80

EXPERT EVIDENCE. *See also* FORENSIC EVIDENCE

admissibility, ch. 6, App. (Nfld. and Lab.)
Alberta, expert evidence provisions, ch. 6, App. (Alta.)
assessments—
 assessment order, 5:60.50
 costs of, 5:40.10, 5:60.40
 joint retainer letter, 5:60.50
 court-appointed. *See* court-appointed assessments, *infra*
 ordering, 5:60
 factors influencing decision to order/not to order, 5:60.20
 “focused assessment”, 5:60.20
 jurisprudence re, 5:60.10
 test re, 5:60.10
 timing, 5:60.10
assessors —
 court-appointed. *See* court-appointed assessments, *infra*
 judicial attitudes to. *See* judicial attitudes to assessors/experts
 judicial rejection of, 5:60.30
 judicial selection of, 5:60.30
 selection of, 5:60.30
British Columbia, expert evidence provisions, ch. 6, App. (B.C.)
calling at trial, rules re —
 Alberta Rules of Civil Procedure, ch. 6, App. (Alta.)
 Manitoba provisions, ch. 6, App. (Man.)
 Saskatchewan provisions, ch. 6, App. (Sask.)
Charter litigation and, 12:60, 12:60.20, 12:80, Sch. B
child protection hearings, 5:80
 agency-retained professionals/employees as “experts”, 5:80.20
 court-ordered assessments in
 basis for ordering, 5:80.10
 content of order, 5:80.10
 costs, 5:80.10
 “parenting capacity” focus, 5:80.10
 report, contents of, 5:80.10
 generally, 5:80
 parent-retained experts, 5:80.30
costs —
 Alberta Rules of Civil Procedure, ch. 6, App. (Alta.)
court-appointed assessments —
 assessment process, 5:40.10

INDEX

EXPERT EVIDENCE — *continued*

court-appointed assessments — — *continued*

- assessment report, 5:40.10
- child protection hearings, 5:40.10
- cost, 5:40.10
- critique of, 5:70.20
- disclosure of records of assessor, 5:40.30
- “fact finding” , 5:40.10
- forms of assessment, 5:40.10
- higher status professional, privileging, 5:40.10, 5:40.10
- interviews, 5:40.10
- methodology, 5:40.10
- “multi-modal” assessment, 5:40.10
- negative consequences, potential, 5:40.20.40
- private disputes, 5:40.10
- psychological tests, 5:40.10
- purposes of, 5:40.20
 - child’s out-of-court statements, 5:40.20.20
 - information for parents and settlements, 5:40.20.30
 - information re child, 5:40.20.20
 - judge education, 5:40.20.10
- settlements and, 5:20.40.60
- social workers vs. psychologists, etc., 5:40.10

court-appointed experts —

- Alberta Rules of Civil Procedure provisions, ch. 6, App. (Alta.)
- B.C. Rules of Civil Procedure provisions, ch. 6, App. (B.C.)
- New Brunswick Rules of Civil Procedure provisions, ch. 6, App. (N.B.)
- Newfoundland and Labrador Rules of Civil Procedure, ch. 6, App. (Nfld. and Lab.)
- Northwest Territories Rules of Civil Procedure, ch. 6, App. (N.W.T.)
- Prince Edward Island Rules of Civil Procedure provisions, ch. 6, App. (P.E.I.)

demand for expert’s attendance —

- Alberta Rules of Civil Procedure, ch. 6, App. (Alta.)

family litigation, unique nature of, 5:20.40

- court-appointed assessors, settlements and, 5:20.40.60
- event focus v. relationship/personality orientation, 5:20.40.30
- jury vs. judge alone, 5:20.40.10
- litigation between parties vs. “best interest inquiry”, 5:20.40.50
- party vs. court-appointed expert, 5:20.40.40
- retrospective vs. prospective, 5:20.40.20

generally, 5:10, 5:100

judges as “gatekeepers”, 5:10

judicial attitudes to assessors/experts, 5:50

- best interests of the child, as value-based determination, 5:50.10

EXPERT EVIDENCE — *continued*

judicial attitudes to assessors/experts — *continued*

- broad approach, 5:50.30
- expert recommendations, 5:50.30
- narrow approach, 5:50.10, 5:50.20
- scepticism, 5:50.10
- settlement effect of assessment, 5:50.30
- judicial weight and discounting assessor/expert testimony, 5:90
 - application of incorrect principles, 5:90.50
 - further assessments and critiques, 5:90.20
 - incompetence/inaccuracies, 5:90.40
 - objectivity issues, 5:90.10
 - prior professional role and bias, 5:90.30
- Manitoba, expert evidence provisions, ch. 6, App. (Man.)
- Mohan case, effect of, 5:20
 - admissibility criteria, 5:20.10
 - cases subsequent to Mohan, 5:20.10
 - civil cases and, 5:20.30
 - dangers of expert evidence, 5:20.10
 - expert witness —
 - qualifying as, 5:20.20
 - role of, 5:20.20
 - family litigation and. *See* family litigation, unique nature of, *supra*
 - mental health professionals, criminal context, 5:20.10
 - Mohan discussed, 4:20.10
 - scientific “reliability”, 5:20.10
- New Brunswick, expert evidence provisions, ch. 6, App. (N.B.)
- Newfoundland and Labrador, expert evidence provisions, ch. 6, App. (Nfld. and Lab.)
- Northwest Territories, expert evidence provisions, ch. 6, App. (Alta.), ch. 6, App. (N.W.T.)
- notice to adduce expert evidence —
 - Alberta Rules of Civil Procedure, ch. 6, App. (Alta.)
- Nova Scotia, expert evidence provisions, ch. 6, App. (N.S.)
- Ontario, expert evidence provisions, ch. 6, App. (Ont.)
- opinion evidence at trial —
 - B.C. Rules of Civil Procedure provisions, ch. 6, App. (B.C.)
- party-retained experts, admissibility issues —
 - critique of court-appointed assessment, 5:70.20
 - limitations on opinions of, 5:70.10
 - therapist/physician, expert testimony by, 5:70.30
- pre-trial conference, ch. 6, App. (Nfld and Lab.), ch. 6, App. (Ont.), ch. 6, App. (P.E.I.)
- Prince Edward Island, expert evidence provisions, ch. 6, App. (P.E.I.)
- Quebec, expert evidence provisions, ch. 6, App. (Que.)

INDEX

EXPERT EVIDENCE — *continued*

Quebec, expert evidence provisions, ch. 6, App. (Que.) — *continued*

 courts not bound by, 11.2:60.10

 probative value of court-appointed expert, 11.2:60.20

 probative value of jointly appointed expert, 11.2:60.20

 role of, 11.2:60

qualification as expert, 5:50.40

reports, 5:40.10, 5:80.10

SCC criminal case jurisprudence, application to family cases, 5:20.50

settlement conference brief, ch. 6, App. (N.B.)

settlements, assessment effect on, 5:20.40.60, 5:50.30

social science knowledge and child-related litigation, 5:30

 expert witness testimony, 5:30.50

 “filtering” process, 5:30.10

 judge’s common sense, 5:30.40

 judge’s reading, 5:30.20

 judicial education programs, 5:30.30

 judicial experience, 5:30.40

 judicial notice, 5:30.20

 legislation and precedents, 5:30.10

trial, rules re —

 court directions, ch. 6, App. (Ont.)

 expert witness reports, serving, ch. 6, App. (Ont.)

 New Brunswick provisions, ch. 6, App. (N.B.)

 very long trials, Alberta Rules of Civil Procedure, ch. 6, App. (Alta.)

Yukon, expert evidence provisions, ch. 6, App. (Yk.)

FAMILY LAW RULES (ALBERTA), NEW. *See* RULES OF COURT (ALBERTA)

FAMILY LAW RULES (ONTARIO)

admission of facts, 2:80

conferences, 2:30

disclosure, documentary, 2:40.20

disclosure, financial, 2:40.10

 financial statements, 2:40.10

 full and frank disclosure, 2:40.10

 limitation on, 2:40.10

 material change, 2:40.10

 scope of, 2:40.10

divorce, 2:100

generally, 2:10, 2:110

motions —

 affidavits, 2:70.10

 applications, etc., vs., 2:20.10

FAMILY LAW RULES (ONTARIO) — *continued*

motions — — *continued*

- bifurcation, for, 2:70.80
 - change/variation to final order, 2:70.60
 - consent/unopposed, 2:70.20
 - contempt proceedings, 2:70.50
 - evidence on, 2:70.10
 - generally, 2:70.10
 - hearsay rules and, 2:70.10
 - striking pleadings/denying audience, 2:70.70
 - summary judgment, for, 2:70.40
 - temporary orders, re, 2:70.10
 - urgent basis, on, 2:70.30.10
 - without notice, 2:70.30.20
- particulars, demand for, 2:20.20
- pleadings, 2:20.10
- questioning, 2:50
- third parties, 2:60
- settlement conferences, 2:30
- starting case, 2:20.10
- third parties, disclosure/questioning re, 2:60
- trials, 2:90
- affidavit evidence, 2:90.30
 - calling opposing party as witness, 2:90.60
 - electronic recording evidence, 2:90.30
 - expert witness evidence, 2:90.40, ch. 6, App. (Ont.)
 - reading in evidence, 2:90.50
 - trial record, 2:90.20, ch. 6, App. (Ont.)

FAMILY LITIGATION. *See* CHARTER LITIGATION; EXPERT EVIDENCE; TRIALS, FAMILY LAW

FINANCIAL DISCLOSURE. *See* FAMILY LAW RULES (ONTARIO) OR FAMILY LAW RULES (ALBERTA)

FINANCIAL EXPERTS. *See* EXPERT EVIDENCE

FINANCIAL STATEMENTS. *See* FORENSIC EVIDENCE

FORENSIC EVIDENCE. *See also* EXPERT EVIDENCE

- accountants, of, 6:20.40, 6:30, 6:40
 - circumstances requiring, 6:40.10
 - income analysis, 6:40.10.20
 - miscellaneous functions, 6:40.10.30
 - net family property determinations, 6:40.10.10
 - role of at different stages in case, 6:40.20
- actuaries, of, 6:20.40

INDEX

FORENSIC EVIDENCE — *continued*

- analytic procedures, 6:50.30
- “business valuation”, defined, 6:20.30
- Canadian Society of Forensic Science, 6:20.40
- counsel’s role in obtaining, 6:60
 - disclosure, 6:60.50
 - expert, selecting, 6:60.20
 - joint expert issues, 6:60.30
 - litigation privilege issues, 6:60.50
 - overview re, 6:60.10
 - working with expert, 6:60.40
- experts —
 - cost/benefit analysis re, 6:40.30
 - opinion of, 6:30
 - reports. *See* reports, *infra*
 - role of, 6:30
- financial statements, review of, 6:50.10
 - audit, 6:50.10.10
 - audit vs. review, 6:50.10.60
 - circumstances suggesting need for, 6:50.10.50
 - compilation, 6:50.10.20
 - example, 6:50.10.40
 - review, 6:50.10.30
- “forensic accounting”. *See also* accountants, of, *supra*
 - defined, 6:20.20
- forensic document examiners, role of, 6:20.40
- “forensic”, defined, 6:20.10
- funds tracing, 6:50.40
 - described, 6:50.40
 - examples of, 6:50.40
 - “first in, first out” approach, 6:50.40.10
 - “pro-rata” method, 6:50.40.20
- generally, 6:10, 6:20.40
- health care professionals, of, 6:20.40
- lifestyle analysis, 6:50.20
- opposing expert’s report, checklist re, 6:90
- presentation of, 6:80
 - admissibility, 6:80.10
 - at trial, 6:80.20
 - procedural rules, 6:80.30
 - Evidence Act*, 6:80.30.20
 - Family Law Rules, 6:80.30.10
 - non-Ontario jurisdictions, 6:80.30.30
- reports, 6:70
 - Alberta Rules of Civil Procedure, ch. 6, App. (Alta.)

FORENSIC EVIDENCE — *continued*

reports — *continued*

- B.C. Family Law Rules, ch. 6, App. (B.C.)
- B.C. Rules of Civil Procedure, ch. 6, App. (B.C.)
- critique reports, 6:70.20.10
- income reports, 6:70.20
- limited critique reports, 6:70.20.10
- New Brunswick Rules of Civil Procedure, ch. 6, App. (N.B.)
- Newfoundland and Labrador Rules of Civil Procedure, ch. 6, App. (Nfld. and Lab.)
- Northwest Territories Evidence Act, ch. 6, App. (N.W.T.)
- Nova Scotia Rules of Civil Procedure, ch. 6, App. (N.S.)
- Ontario Rules of Civil Procedure, ch. 6, App. (Ont.)
- Prince Edward Island Evidence Act, ch. 6, App. (P.E.I.)
- Prince Edward Island Rules of Civil Procedure, ch. 6, App. (P.E.I.)
- Quebec Rules of Civil Procedure, ch. 6, App. (Que.)
- opposing expert's. *See* opposing expert's report, *supra*
- "reports vs. schedules" issue, 6:70.30
- types of reports, 6:70
- valuation reports, 6:70.10
- Yukon Evidence Act, ch. 6, App. (Yk.)

FRESH EVIDENCE IN FAMILY LAW ARBITRATION, 10:15

FRESH EVIDENCE ON APPEAL

- admission of fresh evidence, exception re, 10:10.30
 - child-related issues, case law, 10:10.30.30
 - family case law, generally, 10:10.30.20
 - statutory provisions re, 10:10.30.10
- appeal routes, 10:10.10
- Court of Appeal, appeal to, 10:10.10
- Courts of Justice Act* appeal provisions, 10:10.10, 10:10.20
- Divisional Court, appeal to, 10:10.10
- Family Law Rules appeal provisions, 10:10.20
- generally, 10:05
- Rules of Civil Procedure appeal provisions, 10:10.10, 10:10.20

FUNDS, TRACING. *See* FORENSIC EVIDENCE

HEALTH CARE PROFESSIONALS. *See also* MEDICAL REPORTS

- evidence of, 6:20.40
- mental health professionals, 4:50.50, 5:20.10

HEARSAY

- admitting, advocate's analysis for, 9:20
- affidavits, children's evidence, 4:20.20
- business records and, 1:50.10, 1:50.20

INDEX

HEARSAY — *continued*

child's evidence, 4:20.20, 4:50.10, 4:50.20
definitions of, 9:30.10
exceptions to rule, categorical. *See also* principled approach to, *infra*
 admissions by party, 9:40.20
 limitations on, 9:40.20
 scope of, 9:40.20
 business records, 9:40.40
 common law exception, 9:40.40.20
 statutory exceptions, 9:40.40.10
 children's wishes, statements re, 9:40.60.20
 former testimony, 9:40.30
 limited admissibility, 9:60
 list of, 9:40.10
 past recollection recorded, 9:40.50
 present intention to do future act, 9:40.60.10
 "state of mind", statements re, 9:40.60
 statements re physical/mental/emotional state, 9:40.60
excluding, advocate's analysis for, 9:20
generally, 9:10, 9:70
Khan case, significance of, 9:20, 9:50
medical reports, in, 1:60.50
motions and, 2:70.10
non-hearsay purposes of out-of-court statements, 9:30.20
onus re, 9:20
principled approach to. *See also* exceptions to rule, categorical, *supra*
 Blackman case, 9:50.30
 child abuse hearsay exception, 9:50.10
 generally, 9:50
 K.G.B. exception, 9:50.20
 Khan case, 9:50
 Khelawon case, as complete statement of, 9:50.30
 limited admissibility and, 9:60
 "motive to lie" analysis, 9:50.30
 necessity factor, 9:50.10.10
 reliability factor, 9:50.10.20
 scope of exception, 9:50.10.30
rule re, 9:10

HEIRS, ACTIONS BY/AGAINST, 1:30

JUDGES

court-appointed assessment, purposes of, 5:40.20.10
expert evidence, assessment by. *See* EXPERT EVIDENCE
"gatekeepers", as, 5:10

JUDGES — *continued*

judge's chambers, testimony in, 4:60

social science knowledge, attitudes to. *See* EXPERT EVIDENCE

LAWYERS. *See* COUNSEL, ROLE OF

LITIGATION PRIVILEGE. *See* PRIVILEGE

MANITOBA

Charter litigation, 12:A2

burden of proof, 12:A2:30

justifying the breach, 12:A2:30.20

proving the breach, 12:A2:30.10

remedy, 12:A2:30.30

evidence at first instance, 12:A2:20

framework of claim, 12:A2:10

generally, 12:A2:05

standard of proof, 12:A2:30

justifying the breach, 12:A2:30.20

proving the breach, 12:A2:30.10

remedy, 12:A2:30.30

child protection proceedings, 11:A2

appeals in child protection cases, 11:A2:60

apprehensions and child protection applications, 11:A2:10

fresh evidence on appeal, 11:A2:70

generally, 11:A2:05

hearsay evidence in child protection cases, 11:A2:40

records from third parties, 11:A2:50

temporary and permanent orders, 11:A2:20

voluntary placement agreements, 11:A2:30

e-discovery, 3:A2

Evidence Act, 1:A2

business records, 1:A2:60

documentary evidence as to facts in issue, 1:A2:70

electronic records, 1:A2:50

evidence as to sexual relations, 1:A2:20

limitation, opinion evidence, 1:A2:30

medical reports, 1:A2:40

privilege for marital communications, 1:A2:10

exclusionary issues, 8:A2

disclosure made to third party, 8:A2:40

disclosure of privileged communications to prove settlement, 8:A2:30

discussions at case conference, 8:A2:50

documents at pre-trial, 8:A2:60

generally, 8:A2:05

implied undertaking, litigation privilege, 8:A2:70

INDEX

MANITOBA — *continued*

exclusionary issues — *continued*

inadvertent disclosure of privilege documents, 8:A2:20

solicitor-client privilege, 8:A2:10

expert evidence provisions, ch. 6, App. (Man.)

Family Law Rules, 2:A2

affidavit evidence at trial, 2:A2:110

basics, 2:A2:10

answering a petition, 2:A2:10.20

complete pleadings, importance of, 2:A2:10.40

petition, 2:A2:10.10

reply, 2:A2:10.30

case conferences, 2:A2:60

family evaluator, 2:A2:40

family property reference, 2:A2:80

financial disclosure, 2:A2:20

failure to comply with financial disclosure, 2:A2:20.40

financial statement and disclosure under the child support guidelines,
2:A2:20.20

urgent relief and financial statements, 2:A2:20.30

when financial statement or parts of a financial statement are not
required, 2:A2:20.10

generally, 2:A2:05

interim proceedings, 2:A2:50

affidavit evidence, 2:A2:50.30

improper affidavits, 2:A2:50.40

motion brief, 2:A2:50.50

on notice, 2:A2:50.10

without notice, 2:A2:50.20

mediation, 2:A2:30

parent information program, 2:A2:70

pre-trial conferences, 2:A2:90

trial record, 2:A2:100

forensic evidence, 6:A2

assets acquired during marriage, 6:A2:30

assets acquired prior to marriage, 6:A2:30

expert reports, 6:A2:10

expert witness role, 6:A2:40

family property reference, 6:A2:20

responding to expert evidence, 6:A2:50

fresh evidence on appeal, 10:A2

adducing fresh evidence on appeal, 10:A2:20

setting aside or varying an order, 10:A2:30

materials required for a motion under the Court of Queen's Bench
Rules, 10:A2:30.20

MANITOBA — *continued*

fresh evidence on appeal — *continued*

setting aside or varying an order — *continued*

rules regarding, 10:A2:30.10

varying a custody order, 10:A2:30.30

varying a support order, 10:A2:30.40

statutory provisions, 10:A2:10

appealing, Child Protection Proceeding, 10:A2:10.40

appealing decision made in chambers, 10:A2:10.70

appealing, from Court of Queen's Bench, 10:A2:10.30

appealing, from Master, 10:A2:10.10

appealing, from Provincial Court, 10:A2:10.20

appealing, The Family Maintenance Act, 10:A2:10.50

appeals in the Court of Appeal, 10:A2:10.60

hearsay rule, 9:A2

child protection cases, 9:A2:20

children's evidence, 9:A2:30

exceptions, 9:A2:50

bank records and business records, 9:A2:50.10

documentary evidence, 9:A2:50.30

hearsay evidence in affidavits, 9:A2:50.40

medical reports, 9:A2:50.20

former testimony, 9:A2:60

generally, 9:A2:05

out-of-court statements, 9:A2:70

principles to consider, 9:A2:10

statements made by deceased person, 9:A2:40

MARRIAGE

common law definition —

evidence, 12:60.10

case study (*Halpern v. Toronto (City)*), 12:60.10

communications made during, 1:10

MEDICAL PERSONNEL. *See* HEALTH CARE PROFESSIONALS

MEDICAL REPORTS

admissibility, 1:20.20

election re, 1:60.30

hearsay issue, 1:60.50

provincial statutes re —

chart, ch. 6, App.

provisions. *See* EVIDENCE ACTS, PROVINCIAL

MOTIONS

affidavit evidence and. *See* AFFIDAVIT EVIDENCE

INDEX

MOTIONS — *continued*

children's evidence and. *See* CHILDREN'S EVIDENCE

hearsay and, 2:70.10

motion for further and better affidavit of documents, 7:30.30

motions for summary judgment —

genuine issue for trial, 11:40.20

test, 11:40.10

rules re. *See* FAMILY LAW RULES (ONTARIO) OR FAMILY LAW RULES (ALBERTA)

NEW BRUNSWICK

expert evidence provisions, ch. 6, App. (N.B.)

NEWFOUNDLAND AND LABRADOR

expert evidence provisions, ch. 6, App. (Nfld. and Lab.)

NORTHWEST TERRITORIES

expert evidence provisions, ch. 6, App. (N.W.T.)

NOVA SCOTIA

expert evidence provisions, ch. 6, App. (N.S.)

ONTARIO

expert evidence provisions, ch. 6, App. (Ont.)

rules. *See* FAMILY LAW RULES (ONTARIO) OR FAMILY LAW RULES (ALBERTA)

OPINION EVIDENCE

experts, of, 6:30

party-retained experts, 5:70.10

statutory provisions re. *See* EVIDENCE ACTS, PROVINCIAL

ORDERS

assessment order. *See* EXPERT EVIDENCE

setting aside/varying, 10:20

Family Law Rules re, 10:20.20

“changing orders”, meaning of, 10:20.20

test, 10:20.20

motions, 2:70.60

Rules of Civil Procedure provisions re, 10:20.10

temporary orders, 2:70.10

PARTICULARS, 2:20.20

PLEADINGS

Family Law Rules re, 2:20.10

striking pleadings, 2:70.70

PRINCE EDWARD ISLAND

expert evidence provisions, ch. 6, App. (P.E.I.)

PRIVILEGE. *See also* EXCLUSIONARY ISSUES

case-by-case privilege —

balancing principle, 8:20.10

described, 8:20

family law cases, in, 8:20.10

Wigmore criteria, application of, 8:20.10

class privilege, 8:20

communications made during marriage, 1:10

evidentiary onus re, 8:50

generally, 8:10

litigation —

dominant vs. substantial purpose, 8:40.10

generally, 8:40

piercing, 8:40.20

policy reasons for, 8:10

solicitor-client —

exceptions to, 8:30.10.10

generally, 8:30

inadvertent disclosure, discretion re preservation of privilege, 8:30.10.40

waiver of

by implication, 8:30.10.30

inadvertent disclosure and, 8:30.10.20, 8:30.10.40

settlement communications —

application of privilege to, 8:60

confidentiality of under Family Law Rules, 8:60

“without prejudice”, meaning of, 8:60

QUEBEC

evidence in family law, ch. 11.2

expert evidence provisions, ch. 6, App. (Que.)

REPORTS. *See* CHILDREN’S EVIDENCE; EVIDENCE ACTS,
PROVINCIAL; MEDICAL REPORTS; EXPERT EVIDENCE; FORENSIC
EVIDENCE

RULES

Ontario. *See* FAMILY LAW RULES (ONTARIO) OR FAMILY LAW RULES
(ALBERTA)

provincial, ch. 6, App.

RULES OF COURT (ALBERTA)

conclusion, 11.1:40

family law proceedings, general, 11.1:30

actions commenced by originating application, 11.1:30.100

INDEX

RULES OF COURT (ALBERTA) — *continued*

family law proceedings, general — *continued*

- alternate dispute resolution, 11.1:30.60
- applications to vary, 11.1:30.30
- disclosure, 11.1:30.50, 11.1:30.90
- expert witnesses and Family Law Practice Note “7”, 11.1:30.120
- interim applications, 11.1:30.30
- proceedings under Divorce Act, 11.1:30.10
- proceedings under Family Law Act, 11.1:30.70
- proceedings under Matrimonial Act, 11.1:30.10
- protection and restraining orders, 11.1:30.110
- questioning, 11.1:30.90
- response, 11.1:30.20
- service, 11.1:30.20
- summary judgment, 11.1:30.40, 11.1:30.80
- introduction, 11.1:10
- purpose, 11.1:20

SASKATCHEWAN

- appeals and fresh evidence, 10:A1
 - adducing fresh evidence on appeal, 10:A1:20
 - evidentiary issues in setting aside or varying an order, 10:A1:30
 - rules, 10:A1:40:10
 - introduction, 10:A1:05
 - statutory provisions, 10:A1:10
 - appealing decision in Child Protection Proceeding, 10:A1:10.30
 - appealing decision made under The Family Maintenance Act, 1997, 10:A1:10.40
 - appealing decision made under The Family Property Act, 10:A1:10.50
 - appealing from Court of Queen’s Bench, Family Division, 10:A1:10.20
 - appealing from provincial court, 10:A1:10.10
 - relevant provisions regarding appeals in Court of Appeal, 10:A1:10.60
- Charter litigation, 12:A1
 - burden of proof, 12:A1:30
 - justifying the limitation, 12:A1:30.20
 - proving the breach, 12:A1:30.10
 - remedy, 12:A1:30.30
 - evidence at first instance, 12:A1:20
 - framework, 12:A1:10
 - generally, 12:A1:05
 - standard of proof, 12:A1:30
 - justifying the limitation, 12:A1:30.20
 - proving the breach, 12:A1:30.10
 - remedy, 12:A1:30.30

SASKATCHEWAN — *continued*

- child protection proceedings, 11:A1
 - access, 11:A1:40
 - agreements, 11:A1:30
 - applications, 11:A1:10
 - child in need of protection, 11:A1:10.10
 - apprehensions, 11:A1:10
 - child in need of protection, 11:A1:10.10
 - consents, 11:A1:30
 - evidence, 11:A1:50
 - business proceedings, 11:A1:50.30
 - children's statements, 11:A1:50.10
 - expert assessments, 11:A1:50.40
 - previous proceedings, 11:A1:50.20
 - generally, 11:A1:05
 - hearings, 11:A1:20
 - orders, 11:A1:20
- evidence act, 1:A1
 - business records, 1:A1:60
 - communications during marriage, privilege, 1:A1:10
 - effect of apology on liability, 1:A1:40
 - electronic records, 1:A1:50
 - generally, 1:A1:05
 - medical reports, 1:A1:30
 - opinion evidence, limitation on, 1:A1:20
- electronic discovery, 3:A1
- exclusionary issues, 8:A1:05
 - introduction, 8:A1:10
 - pre-trial conference, 8:A1:20
 - solicitor-client privilege, 8:A1:10
- expert evidence provisions, ch. 6, App. (Sask.)
- family rules, 2:A1
 - applications to appoint a mediator, 2:A1:120
 - basics, 2:A1:30
 - answering a petition, 2:A1:30.20
 - pleadings and starting a case, 2:A1:30.10
 - reply, 2:A1:30.30
 - child support, 2:A1:110
 - custody and access, 2:A1:100
 - disclosure, 2:A1:70
 - correcting and updating disclosure, 2:A1:70.60
 - failure to disclose, 2:A1:70.50
 - financial statements and property statements, 2:A1:70.10
 - notice to disclose, 2:A1:70.30
 - notice to reply to written questions, 2:A1:70.40

INDEX

SASKATCHEWAN — *continued*

family rules — *continued*

disclosure — *continued*

when statements not required, 2:A1:70.20

evidence, 2:A1:50

evidence from non-parties, 2:A1:80

disclosure by non-parties, 2:A1:80.10

discover of non-parties, 2:A1:80.20

informality of family law procedures, 2:A1:10

introduction, 2:A1:05

interim relief, 2:A1:40

affidavit evidence, 2:A1:40.20

motions, 2:A1:40.10

medical reports, 2:A1:130

privacy and confidentiality, 2:A1:20

adultery, 2:A1:20.40

financial document confidentiality, 2:A1:20.30

private hearings, 2:A1:20.10

restricted access to court records, 2:A1:20.20

uncontested family law proceedings, 2:A1:60

variation of orders, 2:A1:90

forensic evidence, 6:A1

affidavit evidence, 6:A1:20

appraisal reports, 6:A1:30

expert reports, 6:A1:10

hearsay and exceptions to hearsay, 9:A1

children's evidence, 9:A1:30

children's preferences, 9:A1:30

exceptions, 9:A1:50

business records, 9:A1:50.10

certificate regarding convictions, 9:A1:50.40

hearsay evidence in affidavits, 9:A1:50.50

medical report, 9:A1:50.30

proof of adultery, 9:A1:50.40

public records, 9:A1:50.50

hearsay evidence, 9:A1:20

introduction, 9:A1:05

principles to consider regarding hearsay evidence, 9:A1:10

statements made by deceased person, 9:A1:40

statements made out-of-court, 9:A1:50.50

SETTLEMENT COMMUNICATIONS, 8:60

SETTLEMENT CONFERENCES

rules re, 2:30

SETTLEMENT CONFERENCES — *continued*

settlement conference brief, ch. 6, App. (N.B.)

SETTLEMENTS

assessment and, 5:50.30

court-appointed assessors, and, 5:20.40.60, 5:50.30

information for, 5:40.20.30

SOCIAL SCIENCE KNOWLEDGE. *See* EXPERT EVIDENCE

SOLICITOR-CLIENT PRIVILEGE. *See* PRIVILEGE

THIRD PARTIES

child's evidence through. *See* CHILDREN'S EVIDENCE

personal diaries/cards of third parties, admissibility, 8:110

questioning, 2:60, 7:30.70

TRIALS, FAMILY LAW. *See also* FAMILY LAW RULES (ONTARIO) OR
FAMILY LAW RULES (ALBERTA)

brief of authorities, preparation, 7:30.100

children's evidence. *See* CHILDREN'S EVIDENCE

document preparation, elements of, 7:20

evidence, obtaining, 7:30, Sch. A

 cross-examination preparation, 7:30.90

 expert reports, 7:30.50

 joint exhibit books, 7:30.60

 motion for further and better affidavit of documents, 7:30.30

 notices under Evidence Act, 7:30.40

 questioning, 7:30.10

 questioning third parties under FLR, 7:30.70

 request to admit, 7:30.20

 witness/party preparation, 7:30.80

expert evidence at. *See* EXPERT EVIDENCE

generally, 7:10

planning, 7:20

provincial provisions, ch. 6, App.

trial, presentation at, 7:40, Sch. A

 adverse inferences, establishing, 7:40.30

 memos of argument, 7:40.40

 objections to documents/oral evidence, 7:40.20

 opening, 7:40.10

VIDEO AND AUDIOTAPE

admissibility, 8:80

children's evidence, 4:50.40

hearsay related through, 4:50.10

VOIR DIRE, 4:50.20, 4:50.30

INDEX

YUKON

expert evidence provisions, ch. 6, App. (Yk.)