

TABLE OF CONTENTS

| | |
|---------------------|------|
| Dedication | iii |
| Preface | v |
| Table of Cases..... | xiii |

INTRODUCTION

| | |
|---|---|
| 1. THE EVOLUTION OF CANADA'S IMMIGRATION POLICY AND THE ROLE OF THE FAMILY..... | 2 |
| 2. THE EVOLUTION OF CANADIAN FAMILIES | 5 |
| 3. KEY AREAS OF INTERSECTION | 7 |

CHAPTER 1: BEST INTERESTS OF THE CHILD

| | |
|--|----|
| 1. BEST INTERESTS OF THE CHILD..... | 11 |
| a) Definition and Scope of Impact (Immigration)..... | 12 |
| i) The Definition of "Child" for the Purposes of a Best Interests Analysis (Immigration)..... | 12 |
| ii) Section 3(3) (f) of the <i>Immigration and Refugee Protection Act</i> and the <i>Convention on the Rights of the Child</i> | 15 |
| iii) Section 25 of the <i>Immigration and Refugee Protection Act</i> and the Best Interests of the Child | 16 |
| iv) Section 117(2) (a) of the <i>Immigration and Refugee Protection Regulations</i> and the Best Interests of the Child | 25 |
| b) Definition and Scope of Impact (Family) | 26 |
| i) The Definition of "Child" for the Purposes of a Best Interests Analysis (Family) | 27 |
| ii) The Legislative Context..... | 27 |
| iii) The Jurisprudence | 31 |
| c) Adopting a Family Law Approach in the Immigration Context..... | 33 |
| d) Education Rights for Children | 35 |
| e) Jurisdiction of Children's Aid Societies and the Courts..... | 36 |
| f) Conclusion on the Best Interests of the Child (Immigration and Family) | 40 |
| i) Best Interests of the Child: Immigration..... | 40 |
| ii) Best Interests of the Child: Family | 41 |
| iii) Best Interests of the Child: Immigration and Family | 42 |
| iv) Best Interests of the Child: Education Rights | 42 |
| v) Best Interests of the Child: Jurisdictional Questions..... | 43 |

CHAPTER 2: SPOUSAL RELATIONSHIPS AND FAMILY CLASS SPONSORSHIPS

| | |
|--------------------------------------|----|
| 1. FAMILY CLASS | 45 |
| a) Definitions and Requirements..... | 45 |

| | | |
|-------|---|----|
| i) | Sponsor..... | 45 |
| ii) | Spouse..... | 49 |
| A) | Domestic marriage, foreign marriage and proxy marriage..... | 50 |
| B) | Separated spouses | 51 |
| iii) | Common-Law Partner | 52 |
| iv) | Conjugal Partner..... | 56 |
| v) | Conditional Permanent Residency for Spouses, Common-Law Partners and Conjugal Partners..... | 59 |
| vi) | Parents..... | 63 |
| vii) | Dependent Children | 63 |
| viii) | Exclusions from the Family Class..... | 64 |
| A) | Section 117(9)(c)(i) of the <i>Immigration and Refugee Protection Regulations</i> : Polygamous relationships and foreign divorce | 65 |
| B) | Section 117(9)(d) of the <i>Immigration and Refugee Protection Regulations</i> : Exclusion of undeclared family members | 72 |
| C) | Section 4 of the <i>Immigration and Refugee Protection Regulations</i> : Bad faith..... | 74 |
| b) | Procedures | 75 |
| c) | Sponsorship Undertakings and Sponsorship Agreements | 76 |
| i) | Sponsorship Undertaking..... | 76 |
| ii) | Sponsorship Agreement..... | 78 |
| iii) | Sponsorship Debt | 80 |
| 2. | SPONSORSHIP AND FAMILY LAW SUPPORT OBLIGATIONS | 85 |
| a) | Spousal Support Overview | 85 |
| b) | Effect of Sponsorship Agreements on Support Obligations—A Review of the Case Law | 89 |
| i) | Overview | 89 |
| ii) | General Entitlement to Spousal Support | 89 |
| iii) | Bad Faith Marriages and Entitlement to Spousal Support..... | 92 |
| iv) | Quantum and Duration of Spousal Support..... | 92 |
| v) | Impact of Accessing Social Assistance | 94 |
| vi) | Impact of Sponsorship Agreements on Domestic Contracts | 95 |
| vii) | Sponsorship Debts and Division of Family Property | 97 |
| viii) | Child Support..... | 97 |
| ix) | Parental Support..... | 98 |
| x) | Judicial Notice of a Sponsorship Agreement | 99 |

CHAPTER 3: MARRIAGE AND DIVORCE

| | | |
|------|---|-----|
| 1. | GETTING MARRIED IN CANADA | 101 |
| a) | Marriage Requirements | 101 |
| i) | Age Requirement..... | 101 |
| ii) | Publication of Banns or Marriage Licence..... | 101 |
| iii) | Solemnization Requirements..... | 103 |

| | | |
|-----------|---|-----|
| b) | Foreign Divorce Opinion Letter..... | 104 |
| c) | The <i>Civil Marriage Act</i> —Marriage for Non-Domiciled Parties | 105 |
| d) | <i>Zero Tolerance for Barbaric Cultural Practices Act</i> —Proposed Amendments to the <i>Civil Marriage Act</i> and the <i>Criminal Code</i> | 105 |
| 2. | GETTING DIVORCED IN CANADA | 107 |
| a) | Divorce Requirements..... | 107 |
| b) | Corollary Relief..... | 108 |
| c) | The <i>Civil Marriage Act</i> —Divorce for Non-Resident Spouses | 109 |
| 3. | TREATMENT OF FOREIGN SAME-SEX CIVIL PARTNERSHIPS | 110 |
| 4. | IMMIGRATION MARRIAGES AND ANNULMENTS | 114 |

CHAPTER 4: INADMISSIBILITY AND REMOVAL

| | | |
|-----------|--|-----|
| 1. | INADMISSIBILITY AND REMOVAL | 117 |
| a) | Inadmissibility..... | 117 |
| i) | Criminality..... | 118 |
| ii) | Health Grounds | 120 |
| iii) | Financial Reasons..... | 120 |
| iv) | Misrepresentation | 121 |
| v) | Inadmissible Family Members..... | 122 |
| vi) | Potential New Ground for Inadmissibility: Polygamy..... | 123 |
| b) | Removal..... | 124 |
| c) | Return to Canada | 128 |
| i) | Authorization to Return to Canada (ARC)..... | 128 |
| A) | Who requires ARC?..... | 128 |
| B) | Who does not require ARC?..... | 129 |
| C) | Considerations for ARC..... | 130 |
| D) | The ARC process..... | 131 |
| 2. | IMPACT OF FAMILY COURT ORDERS ON IMMIGRATION REMOVAL ORDERS | 132 |
| a) | Section 50(a) of the <i>Immigration and Refugee Protection Act</i> | 132 |
| b) | Recent Jurisprudence on Section 50(a) of the <i>Immigration and Refugee Protection Act</i> | 136 |
| c) | Crown Wardship Orders and Section 50(a) of the <i>Immigration and Refugee Protection Act</i> | 142 |
| d) | Jurisdictional Questions | 143 |
| e) | Parental Deportation Cases: Section 7 of the <i>Charter</i> and International Law | 146 |
| f) | Conclusions..... | 148 |
| i) | Conclusion on the Impact of a Family Court Order | 148 |
| ii) | Conclusion on Section 7 of the <i>Charter</i> and International Law..... | 149 |

CHAPTER 5: INTERCOUNTRY ADOPTION

| | |
|--|-----|
| 1. THE ADOPTION PROCESS | 151 |
| a) Adoption Finalized in Canada | 152 |
| i) Residency Requirements | 152 |
| ii) Consent | 153 |
| A) Parental consent | 153 |
| B) Consent of a Director | 154 |
| C) Consent of the adoptee | 154 |
| D) Exceptions to consent | 154 |
| E) Form of consent | 155 |
| F) Withdrawal of consent | 155 |
| iii) Placement for Adoption | 155 |
| A) Placement for adoption in non-relative adoptions | 155 |
| B) Placement for adoption in relative adoptions | 156 |
| C) Terms and conditions of a placement | 156 |
| D) Placement refused | 157 |
| iv) Adoption Orders | 157 |
| A) Adoption order for a child | 157 |
| B) Who may apply to adopt a child | 159 |
| C) Adoption order for an adult | 160 |
| D) Appealing an adoption order decision | 161 |
| E) Status of an adopted person | 161 |
| v) Compensation | 161 |
| vi) Summary of the Adoption Process Pursuant to the <i>Child and Family Services Act</i> | 162 |
| b) Adoption Finalized Outside of Canada | 163 |
| i) Adoption Process: The Ontario Requirements | 164 |
| ii) Compensation | 165 |
| iii) Privacy | 165 |
| iv) Summary of the Adoption Process Pursuant to the <i>Intercountry Adoption Act</i> | 165 |
| c) Adoption Finalized In or Outside of Canada | 166 |
| i) Applicability of the <i>Hague Convention on Adoption</i> | 166 |
| ii) The State of Origin | 166 |
| iii) The Receiving State | 167 |
| iv) The Process | 168 |
| v) Compensation | 170 |
| vi) Summary of the Adoption Process Pursuant to the <i>Hague Convention on Adoption</i> | 170 |
| 2. THE CITIZENSHIP OR IMMIGRATION PROCESS | 171 |
| a) Pros and Cons | 172 |
| i) Pros of Choosing the Citizenship Process | 172 |
| ii) Cons of Choosing the Citizenship Process | 172 |
| iii) Pros of Choosing the Immigration Process | 174 |
| iv) Cons of Choosing the Immigration Process | 174 |

| | | |
|------|---|-----|
| b) | The Citizenship Process | 174 |
| i) | Citizenship for an Adopted Child..... | 175 |
| ii) | Citizenship for an Adopted Adult..... | 176 |
| iii) | Summary of the Citizenship Process | 177 |
| c) | The Immigration Process..... | 178 |
| i) | Eligibility to Sponsor | 179 |
| ii) | Sponsorship of a Child | 180 |
| iii) | Sponsorship of an Adult..... | 182 |
| iv) | Issues Applicable to Sponsoring Both Children and Adults | 183 |
| A) | Bad faith..... | 183 |
| B) | Adoption of convenience | 184 |
| C) | Revoked adoptions..... | 185 |
| v) | Summary of the Immigration Process | 185 |
| 3. | INTERCOUNTRY ADOPTIONS AND THE COMMON LAW | 187 |
| a) | Adoption Finalized Outside of Canada..... | 188 |
| i) | Adoption in Accordance with the Laws of the Foreign Jurisdiction | 188 |
| A) | Duty of the adoptive parent to provide evidence..... | 188 |
| B) | Duty of the decision maker to consider the evidence | 190 |
| C) | Effect of a valid foreign court order | 191 |
| ii) | Creation of a Genuine Parent-Child Relationship | 193 |
| A) | Factors to consider | 193 |
| B) | Is the parent-child relationship forward looking?..... | 195 |
| C) | Case examples: Reasons for acceptance or rejection..... | 197 |
| b) | Adoptions Finalized Within Canada | 200 |
| i) | The “Lock-In” Date | 201 |
| ii) | The Meaning of the Phrase: “Otherwise Legally Available for Adoption” | 202 |
| iii) | The Applicability of Sections 117(7) and 117(8) of the <i>Immigration and Refugee Protection Regulations</i> | 204 |
| A) | Section 117(7) of the <i>Immigration and Refugee Protection Regulations</i> | 204 |
| B) | Section 117(8) of the <i>Immigration and Refugee Protection Regulations</i> | 205 |
| iv) | Foreign Law..... | 206 |
| v) | The Meaning of the Word “Resident” | 206 |
| A) | The meaning of “resident” under the old <i>Child Welfare Act</i> | 206 |
| B) | The meaning of “resident” under the current <i>Child and Family Services Act</i> | 208 |
| vi) | Adoption for a “Collateral Purpose” | 209 |
| A) | Collateral purpose found..... | 210 |
| B) | No collateral purpose found | 211 |
| vii) | Adult Adoptions..... | 213 |
| A) | Guidelines for the court | 213 |
| B) | Fundamental criteria for an adult adoption | 215 |

| | |
|---|-----|
| C) A “gap” to be filled | 216 |
| c) Cases Under the <i>Citizenship Act</i> | 218 |
| i) Standard of Review | 219 |
| ii) Severance of the Pre-Existing Parent-Child Relationship | 221 |
| iii) Adoption in Accordance with Foreign Law | 222 |
| iv) Criminality | 224 |
| v) Goals of an Adoption | 226 |
| vi) Procedural Fairness | 227 |

CHAPTER 6: CITIZENSHIP THROUGH FAMILIAL RELATIONSHIPS

| | |
|---|-----|
| 1. CITIZENSHIP BY BIRTH AND ITS LIMITATIONS | 229 |
| a) Case Law on Section 3(1) (b) of the <i>Citizenship Act</i> | 230 |
| b) Case Law on Section 3(1) (g) of the <i>Citizenship Act</i> | 236 |
| c) Case Law on DNA Testing | 238 |

CHAPTER 7: CONSTITUTIONAL AND INTERNATIONAL LAW

| | |
|--|-----|
| 1. SECTION 117(9)(d) OF THE <i>IMMIGRATION AND REFUGEE PROTECTION REGULATIONS</i> | 242 |
| 2. SECTION 117(1)(g) OF THE <i>IMMIGRATION AND REFUGEE PROTECTION REGULATIONS</i> | 247 |
| 3. SECTION 133(1)(k) OF THE <i>IMMIGRATION AND REFUGEE PROTECTION REGULATIONS</i> | 249 |
| 4. THE HAGUE CONVENTION ON CHILD ABDUCTION | 252 |

APPENDICES

| | |
|---|-----|
| Appendix A: Sponsorship Agreements and Spousal Support Obligations | 267 |
| Appendix B: Sponsorship Agreements and Child Support Obligations | 286 |
| Appendix C: Clarification of Regulation 117(9) (d)—Exclusion from Membership in the Family Class | 292 |
| Appendix D: Family Court Orders and Immigration Removal Orders | 293 |
| Index | 301 |