

TABLE OF CONTENTS

<i>Preface</i>	P-1
<i>Contents Checklist</i>	CL-1
<i>Table of Cases</i>	TC-1
FAMILY LAW ACT	FLA-1
INTRODUCTORY	PRE-1
Preamble	PRE-1
Commentary	PRE-1
Pre§1.01 Introduction	
Pre§1.02 Interpretation	
Pre§1.03 Particular cases	
SECTION 1(1) Definitions	1-1
“child”	1-1
Correlator	1-1
Commentary	1-1
Abolition of distinction of children born out of wedlock	
1(1)§1.01 Abolition of distinction	
1(1)§1.02 Jurisdiction of Courts	
1(1)§1.03 Other statutes	
Settled Intention	
1(1)§2.01 Introduction	
1(1)§2.02 Settled intention	
1(1)§2.03 The relationship	
1(1)§2.04 Financial provision	
1(1)§2.05 In loco parentis	
1(1)§2.06 Timing	
1(1)§2.07 Objective or subjective test	
1(1)§2.08 Onus of proof	
“child support guidelines”	1-10
Correlator	1-10
Commentary	1-10
1(1)§2(A).01 Introduction	
“cohabit”	1-10
Correlator	1-10
Commentary	1-11
1(1)§3.01 Definition	
1(1)§3.02 Conjugal relationship	
1(1)§3.03 Elements of cohabitation	
1(1)§3.04 Financial provision	
1(1)§3.05 Residency	
1(1)§3.06 Timing	

“court”	1-17
Correlator	1-17
Commentary	1-18
1(1)§4.01 Introduction	
1(1)§4.02 Ontario Court of Justice	
“domestic contract”	1-18
Correlator	1-18
Commentary	1-19
1(1)§5.01 Introduction	
“parent”	1-19
Correlator	1-19
Commentary	1-19
1(1)§6.01 Introduction	
1(1)§6.02 Exclusion	
1(1)§6.03 Parental status	
“paternity agreement”	1-20
Correlator	1-20
Commentary	1-21
1(1)§7.01 Introduction	
“spouse”	1-21
Correlator	1-21
Commentary	1-22
1(1)§8.01 Introduction	
1(1)§8.02 Clause (a) Married spouses	
1(1)§8.03 Clause (b) Void or voidable marriages	
1(1)§8.04 Differing definitions	
SECTION 1(2) Polygamous marriages	1-24
Correlator	1-24
Commentary	1-24
1(2)§1.01 Introduction	
SECTION 2(1) Staying application.	2-1
Correlator	2-1
Commentary	2-1
2(1)§1.01 Introduction	
2(1)§1.02 Jurisdiction	
2(1)§1.03 Discretion	
2(1)§1.04 Particular cases	
SECTION 2(2) All proceedings in one court.	2-2
Commentary	2-2
2(2)§1.01 Introduction	
2(2)§1.02 Jurisdiction	
2(2)§1.03 Transfer from Provincial Division to General Division	
2(2)§1.04 Place of Hearing	

TABLE OF CONTENTS

2(2)§1.05 Particular cases	
SECTION 2(3) Applications in Superior Court of Justice	2-3
Commentary	2-4
2(3)§1.01 Introduction	
SECTION 2(4) Statement re removal of barriers to remarriage – (5)	
Idem – (6) Dismissal, etc. – (7) Exception	2-4
Correlator	2-4
Commentary	2-5
2(4) – (7)§1.01 Introduction	
SECTION 2(8) Extension of times.	2-6
Correlator	2-6
Commentary	2-6
2(8)§1.01 Introduction	
2(8)§1.02 Clause (a) Apparent grounds	
2(8)§1.03 Clause (b) Good faith	
2(8)§1.04 Clause (c) Substantial prejudice	
2(8)§1.05 Residual discretion	
SECTION 2(9) Incorporation of contract in order.	2-8.4
Commentary	2-8.4
2(9)§1.01 Introduction	
2(9)§1.02 Jurisdiction	
2(9)§1.03 Status to apply	
2(9)§1.04 Test for incorporation	
2(9)§1.05 Effect of incorporation	
SECTION 2(10) Act subject to contracts	2-10
Correlator	2-10
Commentary	2-10
2(10)§1.01 Introduction	
2(10)§1.02 Domestic contract may not prevail	
2(10)§1.03 Effect of the subsection	
2(10)§1.04 Type of agreement	
2(10)§1.05 Agreement must be valid	
2(10)§1.06 Agreement must make alternate provision	
2(10)§1.07 Effect of reconciliation on separation agreement	
SECTION 2(11) Registration of orders	2-20
Commentary	2-20
2(11)§1.01 Introduction	
SECTION 3(1) Mediation – (2) Consent to act – (3) Duty of mediator –	
(4) Full or limited report – (5) Filing and copies of report – (6)	
Admissions, etc., in the course of mediation – (7) Fees and expenses	
– (8) Idem, serious financial hardship	3-1
Commentary	3-2
3§1.01 Introduction	

PART I FAMILY PROPERTY..... 4-1

SECTION 4(1) Definitions – (1.1) Net family property, liabilities – (2) Excluded property – (3) Onus of proof re deductions and exclusions – (4) Close of business – (5) Net family property not to be less than zero 4-2

 Correlator 4-4

 Commentary 4-4

 Introduction

 4§1.01 Separate property regime

 4§1.02 No creation of property rights

 4§1.03 No reliance on characterization

 4§1.04 Ultimate creation of debtor-creditor relationship

 4§1.05 Debts

 Net Family Property

 4§2.01 Introduction

 Ownership

 4§3.01 Preliminary question

 4§3.02 Trust doctrines

 4§3.03 After-acquired property

 4§3.04 Miscellaneous cases

 “Property”

 4§4.01 Introduction

 4§4.02 Definition of “property”

 4§4.03 Broad definition

 4§4.04 Interest in property

 4§4.05 Income streams

 4§4.06 Degrees, licences and rights

 4§4.07 Employment rights

 (a) Contracts of employment

 (b) Pension entitlements

 (c) Severance benefits

 4§4.08 Workers’ compensation benefits

 4§4.09 Legal rights

 (a) Contract rights

 (b) Rights to sue

 (c) Statutory rights

 (d) Other entitlement

 4§4.10 The extended definition

 “Valuation Date”

 4§5.01 Introduction

 4§5.02 Marriage breakdown

TABLE OF CONTENTS

4§5.03	Improvident depletion
4§5.04	Death
4§5.05	Circumstances arising after the valuation date
“Value”	
4§6.01	Introduction
4§6.02	Definition
4§6.03	Evidence
(a)	Hindsight evidence
(b)	The valuation process
4§6.04	Onus of proof
4§6.05	Valuation of specific assets
(a)	Business interests
(b)	Professional practices
(c)	Pensions
(d)	Retirement allowances and severance pay
(e)	Trusts
(f)	Investments
(g)	Real estate
(h)	Miscellaneous
Debts and Other Liabilities	
4§7.01	Introduction
4§7.02	Statutory definition
4§7.03	Date of measurement
4§7.04	Interspousal debts
4§7.05	Other liabilities
(a)	Contingent liabilities
(b)	Accrued income taxes
(c)	Notional tax consequences
(d)	Disposition costs
(e)	Miscellaneous matters
4§7.06	Debts and excluded property
4§8.01	Proof
The Marriage-Date Deduction	
4§9.01	Introduction
4§9.02	Property owned on the date of marriage
4§9.03	Property other than a matrimonial home
4§9.04	Marriage-date debts
4§9.05	“Calculated as of the date of marriage”
4§9.06	Proof
Exclusions	
4§10.01	Introduction
Para. 1	“Gifts and inheritances”
4§11.01	Introduction
4§11.02	The elements of the exclusion

(a) “Property”	
(b) Acquisition by gift or inheritance	
(c) Timing of gift or inheritance	
(d) Proof of gift or inheritance	
(e) The doctrine of preclusion	
4§11.03	The matrimonial home exception
4§12.01	Para. 2 Income from inheritance or gifted property
4§13.01	Para. 3 Damages for personal injuries
4§14.01	Para. 4 Life insurance
Para. 5	Traced Property
4§15.01	Introduction
4§15.02	Intermingling with other funds
4§15.03	Tracing to extant property
4§15.04	No backward tracing
4§15.05	Matrimonial home
4§16.01	Para. 6 Domestic contract
4§16.02	Canada Pension Plan Entitlements
4§17.01	Onus of proof
4§17.02	Close of business
4§17.03	Negative net family property
SECTION 5(1)	Equalization of net family properties – (2) Idem – (3) Improvident depletion of spouse’s net family property – (4) No further division – (5) Idem – (6) Variation of share –
(7) Purpose	5-1
Correlator	5-2
Commentary	5-2
	The Equalization Concept
5§1.01	Introduction
5§1.02	Absence of judicial discretion
5§1.03	No divisions of property
	Triggering Events
5§2.01	Marital breakdown
5§2.02	Death
5§2.03	Improvident depletion
	Equalization Orders
5§3.01	Limits of court’s jurisdiction
5§3.02	Equalization the norm
	Unequal Division
5§4.01	Introduction
5§4.02	“Unconscionable”
(a) Meaning of	
5§4.03	Clause (a) Failure to disclose
5§4.04	Clause (b) Debts or other liabilities

TABLE OF CONTENTS

5§4.05	Clause (c) Interspousal gifts	
5§4.06	Clause (d) “Intentional or reckless depletion”	
5§4.07	Clause (e) “Period of cohabitation”	
5§4.08	Clause (f) Debts and liabilities for the support of the family	
5§4.09	Clause (g) “Written agreement”	
5§4.10	Clause (h) “Any other circumstance”	
5§4.11	Awards if “unconscionability” found	
5§4.12	Post separation adjustments	
5§5.01	Subsec. (7) Purpose	
SECTION 6(1)	Election: spouse’s will – (2) Idem: spouse’s intestacy – (3) Idem: spouse’s partial intestacy – (4) Property outside estate – (5) Gifts by will – (6) Amounts to be credited – (7) Same – (8) Effect of election to receive entitlement under section 5 – (9) Idem – (10) Manner of making election – (11) Deemed election – (12) Priority of spouse’s entitlement – (13) Exception – (14) Distribution within six months of death restricted – (15) Idem: notice of application – (16) Extension of limitation period – (17) Exception – (18) Definition – (19) Liability of personal representative – (20) Order suspending administration	6-1
	Correlator	6-4
	Commentary	6-5
	6§1.01 Introduction	
	Election	
	6§2.01 Right to elect	
	6§2.02 Election to take as beneficiary	
	6§2.03 Election to take under the act	
	6§2.04 Manner of making election	
	6§2.05 Failure to file election	
	6§3.01 Priority of spouse’s entitlement	
	6§4.01 Restriction on distribution of estate	
	6§5.01 Liability of personal representative	
	6§6.01 Order suspending administration	
SECTION 7(1)	Application to court – (2) Personal action, estates – (3)	
	Limitation	7-1
	Correlator	7-1
	Commentary	7-2
	7§1.01 Right of action	
	7§1.02 Limitation periods	
	Clause (a)	
	Clause (b)	
	Clause (c)	
SECTION 8	Statement of property	8-1
	Correlator	8-1

Commentary	8-1
8§1.01 Introduction	
SECTION 9(1) Powers of court – (2) Financial information, inspections	
– (3) Variation – (4) Ten-year period	9-1
Correlator	9-2
Commentary	9-2
9§1.01 Introduction	
Clause (a) Payment	
9§2.01 Payment – The general rule	
9§2.02 No reallocation of assets	
9§2.03 Adjustments to payment	
9§2.04 Interim payment	
9§3.01 Clause (b) Security	
Clause (c) Deferred or Instalment Payments	
9§4.01 Introduction	
9§4.02 Limitation on court’s power	
9§4.03 Ten-year limit	
9§4.04 Pensions “if and when” approach	
(a) Introduction	
(b) “If and when” abolished	
9§4.05 Financial information – Inspections	
9§4.06 Variation	
9§4.07 Jointly owned property	
9§5.01 Property orders	
SECTION 10(1) Determination of questions of title between spouses –	
(2) Estates	10-1
Correlator	10-1
Commentary	10-2
10§1.01 Introduction	
SECTION 10.1(1) Imputed value for family law purposes – (2) Same –	
(3) Order for immediate transfer of a lump sum – (4) Same – (5)	
Order for division of pension payments – (6) Same – (7) Restrictions	
re certain pension plans – (8) Transition, valuation date – (9)	
Transition, previous orders	10.1-1
Commentary	10.1-2
10.1§1.01 Introduction	
10.1§1.02 Valuation	
10.1§1.03 Lump sum transfer	
10.1§1.04 Factors to be considered	
10.1§1.05 Retired members	
10.1§1.06 Retroactivity	
SECTION 11(1) Operating business or farm – (2) Idem	11-1
Correlator	11-1
Commentary	11-1

TABLE OF CONTENTS

11§1.01	Introduction	
SECTION 12	Orders for preservation	12-1
	Correlator	12-1
	Commentary	12-1
12§1.01	Differences from former statute	
12§1.02	The test	
12§1.03	Jurisdiction	
12§1.04	Types of orders	
12§1.05	Effect of order	
12§1.06	Other matters	
SECTION 13	Variation and realization of security	13-1
	Correlator	13-1
	Commentary	13-1
13§1.01	Introduction	
SECTION 13.1	Order regarding conduct	13.1-1
	Correlator	13.1-1
	Commentary	13.1-1
13.1§1.01	Introduction	
SECTION 14	Presumptions	14-1
	Correlator	14-1
	Commentary	14-1
14§1.01	Introduction	
14§1.02	Presumption of resulting trust	
14§1.03	Joint tenancy	
14§1.04	Joint tenancy and exclusions	
SECTION 15	Conflict of laws	15-1
	Commentary	15-1
15§1.01	Introduction	
15§1.02	Common habitual residence	
SECTION 16(1)	Application of Part – (2) Application of s. 14 . .	16-1
	Commentary	16-1
16§1.01	Introduction	
PART II MATRIMONIAL HOME		17-1
Introduction		17-1
SECTION 17	Definitions	17-1
	Commentary	17-1
17§1.01	“Court”	
17§1.02	“Property”	
SECTION 18(1)	Matrimonial home – (2) Ownership of shares – (3)	
	Residence on farmland, etc.	18-1
	Correlator	18-1
	Commentary	18-1

18§1.01	Property	
18§1.02	Interest in property	
18§1.03	Ordinarily occupied	
18§1.04	More than one matrimonial home	
18§1.05	Family residence	
18§1.06	Occupation at separation	
18§2.01	Ownership of shares	
18§2.02	Multiple use property	
(a)	Farmlands	
(b)	Business premises	
(c)	Income property	
(d)	Property used for matrimonial home and other purposes	
18§3.01	Property outside Ontario	
SECTION 19(1)	Possession of matrimonial home – (2) Idem. . .	19-1
	Correlator	19-1
	Commentary	19-1
19§1.01	Introduction	
19§1.02	Equal Right	
19§1.03	Personal right	
19§1.04	Spouse	
SECTION 20(1)	Designation of matrimonial home – (2) Contiguous property – (3) Registration – (4) Effect of designation by both spouses – (5) Effect of designation by one spouse – (6) Cancellation of designation – (7) Revival of other matrimonial homes	20-1
	Commentary	20-2
20§1.01	Designation	
20§1.02	Contiguous property	
20§1.03	Registration	
20§1.04	Cancellation	
SECTION 21(1)	Alienation of matrimonial home – (2) Setting aside transaction – (3) Proof that property not a matrimonial home – (4) Idem, attorney’s personal knowledge – (5) Liens arising by operation of law	21-1
	Commentary	21-2
21§1.01	Introduction	
21§1.02	Spousal consent	
21§1.03	Release of rights	
21§1.04	Court order	
21§1.05	Designation by both spouses	
21§1.06	Setting aside transaction	
21§1.07	Statement	
21§1.08	Miscellaneous	

TABLE OF CONTENTS

SECTION 22(1) Right of redemption and to notice – (2) Service of notice – (3) Idem: power of sale – (4) Payments by spouse – (5) Realization may continue in spouse’s absence 22-1
 Commentary 22-2
 22§1.01 Right of redemption and notice
 22§1.02 Service of notice
 22§1.03 Payment by spouse
 22§1.04 Realization

SECTION 23 Powers of court respecting alienation 23-1
 Commentary 23-1
 23§1.01 Introduction
 23§1.02 Clause (a) Matrimonial home
 23§1.03 Clause (b) Authorizing disposition or encumbrance
 23§1.04 Dispensing with notice
 23§1.05 Setting aside transaction
 23§1.06 Cancellation of designation

SECTION 24(1) Order for possession of matrimonial home – (2) Temporary or interim order – (3) Order for exclusive possession: criteria – (4) Best interests of child – (5) Offence – (6) Arrest without warrant – (7) Existing orders 24-1
 Commentary 24-3
 24§1.01 Introduction

 Powers of Court
 24§2.01 Introduction
 24§2.02 Clause (a) Preservation
 24§2.03 Clause (b) Exclusive possession
 24§2.04 Clause (c) Periodic payments
 24§2.05 Clause (d) Contents
 24§2.06 Clause (e) Payments
 24§2.07 Clause (f) Authorization of disposition or encumbrance
 24§2.08 Clause (g) False statement
 24§2.09 Jurisdiction

 Exclusive Possession
 24§3.01 Powers of court
 24§3.02 Criteria for order for exclusive possession
 (a) General
 (b) Best interests of children
 (c) Financial position
 (d) Written agreements
 (e) Alternate accommodation
 (f) Violence
 24§3.03 Termination of exclusive possession order

24§3.04	Appeals	
24§4.01	Contravention of order	
24§5.01	Common law spouses	
SECTION 25(1)	Variation of possessory order – (2) Variation of conditions of sale – (3) Existing orders	25-1
Commentary		25-1
25§1.01	Introduction	
SECTION 25.1	Order regarding conduct	25.1-1
Correlator		25.1-1
Commentary		25.1-1
25.1§1.01	Introduction	
SECTION 26(1)	Joint tenancy in matrimonial home – (2) Sixty-day period after spouse’s death	26-1
Commentary		26-1
26§1.01	Jointly owned matrimonial home	
26§1.02	Exclusive possession	
SECTION 27	Registration of order	27-1
Commentary		27-1
27§1.01	Introduction	
SECTION 28(1)	Application of Part – (2) Idem	28-1
Commentary		28-1
28§1.01	Introduction	
PART III SUPPORT OBLIGATIONS		29-1
SECTION 29	Definitions	29-1
Correlator		29-1
Commentary		29-1
29§1.01	Dependant	
Spouse		
29§2.01	Types of spouse	
29§2.02	The extended definition of spouse	
(a)	Introduction	
(b)	Clause (a) “Continuously . . . three years”	
(c)	Clause (b) “Relationship of some permanence”	
(d)	Clause (b) “The natural or adoptive parents of a child”	
29§2.03	Retrospective operation	
SECTION 30	Obligation of spouses for support	30-1
Correlator		30-1
Commentary		30-1
Introduction to Support		
30§1.01	Introduction	
30§1.02	“Spouse” defined	

TABLE OF CONTENTS

30§1.03	Entitlement	
30§1.04	Mutuality of support obligations	
30§1.05	Promotion of self-sufficiency	
Support Eligibility: The Law in Transition		
30§2.01	The historical perspective: Fault-based support	
30§2.02	Support under the <i>Family Law Reform Act</i>	
30§2.03	The causal connection test	
30§2.04	Abandonment of causal connection	
30§2.05	The current position: Financial interdependence	
The Need-Ability to Pay Calculus		
30§3.01	Introduction	
30§3.02	Spousal need	
30§3.03	Ability to pay	
30§3.04	Compensatory support	
30§3.05	The structure of Part III	
30§3.06	Legitimate support purpose	
30§3.07	Termination of support order	
30§4.01	Jurisdiction	
SECTION 31(1)	Obligation of parent to support child –	
(2) Idem		31-1
Correlator		31-1
Commentary		31-1
The Obligation		
31§1.01	Introduction	
31§1.02	Definitions	
31§1.03	Limitations on Obligation	
31§1.04	Parties	
31§2.01	Need	
31§2.02	Priority of Child Support	
“Full-time Program of Education”		
31§3.01	Definition	
“Withdrawn From Parental Control”		
31§4.01	What constitutes	
31§5.01	Children born out of wedlock	
SECTION 32	Obligation of child to support parent	32-1
Correlator		32-1
Commentary		32-1
32§1.01	Parent and child defined	
32§1.02	Obligation to support	
32§1.03	Prior care or support	
32§1.04	Third persons	

SECTION 33(1) Order for support – (2) Applicants – (2.1) Same – (3) Same – (4) Setting aside domestic contract – (5) Adding party – (6) Idem – (7) Purposes of order for support of child – (8) Purposes of order for support of spouse – (9) Determination of amount – (10) Conduct – (11) Application of child support guidelines – (12) Exception: special provisions – (13) Reasons – (14) Exception: consent orders – (15) Reasonable arrangements 33-1

Correlator 33-5

Commentary 33-6

Order for Support

33§1.01 Right of action

33§1.02 Court

33§1.03 “Dependants”

33§1.04 Timing

33§1.05 Spousal Support Advisory Guidelines

33§2.01 Parties

Setting Aside Domestic Contract

33§3.01 Introduction

33§3.02 Clause (a) Unconscionable results

33§3.03 Clause (b) Qualification for public funds

33§3.04 Clause (c) Default

33§3.05 Agreement embodied in order

Adding Parties

33§4.01 Introduction

Purposes of Order for Support of Child

33§5.01 Introduction

33§5.02 Apportionment between parents

33§5.03 Natural and adoptive parents

Purposes of Order for Support of Spouse

33§6.01 Introduction

33§6.02 Clause (a) Spousal contributions

33§6.03 Clause (b) Economic burden of child support

33§6.04 Clause (c) To assist a spouse to become able to contribute to his or her own support

33§6.05 Clause (d) Relieve financial hardship

Quantum of Support

33§7.01 Introduction

The Statutory Considerations

33§8.01 Clause (a) Current assets and means

33§8.02 Clause (b) Future assets and means

33§8.03 Clause (c) Dependant’s capacity to contribute to his or her own support

33§8.04 Clause (d) Respondent’s capacity to provide support

TABLE OF CONTENTS

33§8.05	Clause (e) Age and physical and mental health	
33§8.06	Clause (f) Accustomed standard of living	
33§8.07	Clause (g) Measures available	
33§8.08	Clause (h) Legal obligation to provide support for another	
33§8.09	Clause (i) Care for Child	
33§8.10	Clause (j) Contributions to career potential	
33§8.11	[Deleted. February 1998.]	
33§8.12	[Deleted. February 1998.]	
33§8.13	Clause (l), Sub-cl. (i) Duration of cohabitation	
33§8.14	Clause (l), Sub-cl. (ii) Responsibilities assumed during cohabitation	
33§8.15	Clause (l), Sub-cl. (iii) Undertaking the care of child over eighteen	
33§8.16	Clause (l), Sub-cl. (iv) Assistance in the continuation of a program of education for a child	
33§8.17	Clause (l), Sub-cl. (v) Performance of domestic services	
33§8.18	Clause (l), Sub-cl. (vi) Caring for a child	
33§8.19	Clause (m) Any other legal right of the dependant to support	
33§8.20	Conduct	
SECTION 34(1)	Powers of court – (2) Limitation on jurisdiction of Ontario Court of Justice – (3) Assignment of support – (3.1) Same – (4) Support order binds estate – (5) Indexing of support payments – (6) Definition	34-1
	Correlator	34-2
	Commentary	34-2
	Interim Support	
34§1.01	Introduction	
34§1.02	Orders without notice	
34§1.03	Considerations	
34§1.04	Entitlement	
	(a) Spousal support	
	(b) Child support	
	(c) Parental support	
34§1.05	Practice	
	(a) Interim-interim orders	
	(b) Commencement	
	(c) Variation	
	(d) Income and capital	
	(e) Appeals	

Types of Orders

- 34§2.01 Introduction
- 34§2.02 Clause (a) Periodic payments
 - (a) Nominal orders
 - (b) Limited-term support
 - (c) Event-limited support
 - (d) Permanent support
 - (e) Clause (b) Lump sum
 - (f) Clause (c) Transfer of property
 - (g) Clause (d) Exclusive possession
 - (h) Clause (e) Directing payment
 - (i) Clause (f) Payment for period before date of order
 - (j) Clause (g) Reimbursement to welfare agencies
 - (k) Clause (h) Payments for prenatal care and birth of child
 - (l) Clause (i) Designation of beneficiary of life insurance
 - (m) Clause (j) Designation under pension or benefit plan
 - (n) Clause (k) Securing orders
- 34§3.01 Limitation on Family Court's jurisdiction
- 34§4.01 Assignment of support
- 34§5.01 Support order binds estate
- 34§6.01 Indexing

SECTION 35(1) Domestic contract, etc., may be filed with court – (1.1)

Interpretation – (2) Effect of filing – (3) Setting aside available – (4)

Enforcement available despite waiver – (5) Existing contracts, etc. –

(6) Existing arrears 35-1

Correlator 35-2

Commentary 35-2

- 35§1.01 Introduction
- 35§1.02 Filing domestic contracts
- 35§1.03 The effect of filing
- 35§1.04 Enforcement
- 35§1.05 Variation
- 35§1.06 Provisions to the contrary
- 35§1.07 Retrospective operation

SECTION 36(1) Effect of divorce proceeding – (2) Arrears may be

included in order – (3) Idem 36-1

Commentary 36-1

- 36§1.01 Automatic stay
- 36§2.01 Release of stay
- 36§3.01 Determination of arrears
- 36§4.01 Survival of order

TABLE OF CONTENTS

SECTION 37(1) Application for variation – (2) Powers of court: spouse and parent support – (2.1) Powers of court: child support – (2.2) Application of child support guidelines – (2.3) Exception: special provisions – (2.4) Reasons – (2.5) Exception: consent orders – (2.6) Reasonable arrangements – (3) Limitation on applications for variation. 37-1

 Correlator 37-3

 Commentary 37-3

 Application for Variation

 37§1.01 Right to apply

 37§1.02 Type of order

 (a) Valid support order

 (b) Other support orders

 (c) Combined orders

 (d) Domestic contracts and paternity agreements

 37§1.03 Jurisdiction

 (a) Courts

 (b) Domestic contracts

 (c) Interim variation

 37§1.04 Effect of divorce proceedings

 37§1.05 Reviews

 Variation of Spousal or Parental Support Orders

 37§2.01 Introduction

 37§2.02 Original order presumed correct

 37§2.03 The inquiry

 37§2.04 Material change

 37§2.05 Agreements and consent orders

 37§2.06 Order based on imputed income

 37§3.01 Fresh evidence

 37§4.01 Particular cases

 (a) Changes in dependant’s position

 (b) Change in respondent’s position

 Variation of Child Support Orders

 37§5.01 Entitlement

 37§5.02 Change in circumstances

 37§5.03 Timing of the change

 37§5.04 Last order

 37§5.05 Magnitude of change

 37§5.06 Orders

 37§5.07 Special provisions

 37§5.08 Consent orders

 37§5.09 Rescission and discharge of arrears

 37§5.10 Retroactive variation

 37§6.01 Power of the court

37§7.01	Limitation on application	
37§8.01	Appeal	
SECTION 38(1)	Non-application to orders for child support –	
(2)	Application to have existing order indexed – (3) Power of	
court	.....	38-1
Correlator	.....	38-1
Commentary	.....	38-1
38§1.01	Introduction	
SECTION 38.1(1)	Priority to child support – (2) Reasons –	
(3)	Consequences of reduction or termination of child support –	
(4)	Non-application of limitation.	38.1-1
Commentary	.....	38.1-1
38.1§1.01	Priority to child support	
SECTION 39(1)	Existing orders – (2) Combined support orders –	
(3)	Existing proceedings.	39-1
Correlator	.....	39-4
Commentary	.....	39-4
39§1.01	Introduction	
39§2.01	Combined support orders	
39§3.01	Existing actions	
SECTION 39.1	[not in force].....	39.1-1
SECTION 40	Restraining orders.....	40-1
Correlator	.....	40-1
Commentary	.....	40-1
40§1.01	Introduction	
SECTION 41	Financial statement.....	41-1
Correlator	.....	41-1
Commentary	.....	41-1
41§1.01	Introduction	
SECTION 42(1)	Order for return by employer – (2) Return as	
evidence – (3) Order for access to information – (4) Idem –		
(5) Crown bound	.....	42-1
Commentary	.....	42-1
42§1.01	Return by employer	
42§2.01	Access to information	
SECTION 43(1)	Arrest of absconding debtor – (2) Bail	43-1
Commentary	.....	43-1
43§1.01	Introduction	
SECTION 44(1)	Provisional orders – (2) Idem – (3) Transmission for	
hearing – (4) Show cause – (5) Confirmation of order – (6)		
Adjournment for further evidence – (7) Where order not confirmed		
– (8) Certificates as evidence – (9) Right of appeal		44-1
Correlator	.....	44-2
Commentary	.....	44-2

TABLE OF CONTENTS

44§1.01	Introduction	
SECTION 45(1)	Pledging credits for necessities – (2) Liability for necessities of minor – (3) Recovery between persons jointly liable – (4) Common law supplanted	45-1
	Correlator	45-1
	Commentary	45-1
45§1.01	Introduction	
SECTION 46(1)	Restraining order – (2) Same – (3) Provisions of order – (4) Transition	46-1
	Correlator	46-1
	Commentary	46-2
46§1.01	Introduction	
46§2.01	Parties	
46§3.01	Court	
46§4.01	Power of court	
46§5.01	The test	
SECTION 47	Application for custody	47-1
	Correlator	47-1
	Commentary	47-1
47§1.01	Introduction	
SECTION 47.1	Order regarding conduct	47.1-1
	Correlator	47.1-1
	Commentary	47.1-1
47.1§1.01	Introduction	
SECTION 48	Appeal from Ontario Court of Justice	48-1
	Commentary	48-1
48§1.01	Introduction	
SECTION 49(1)	Contempt of orders of Ontario Court of Justice – (2) Conditions of imprisonment – (3) Transition	49-1
	Commentary	49-1
49§1.01	Introduction	
SECTION 50	Limitation [Repealed.]	50-1
50§1.01	General	
PART IV DOMESTIC CONTRACTS		51-1
SECTION 51	Definitions	51-1
	Correlator	51-1
	Commentary	51-1
51§1.01	Definition	
51§1.02	Pre-existing contracts	
51§1.03	What constitutes	
51§1.04	Domestic contracts as contracts	
51§2.01	Family arbitration	

SECTION 52(1) Marriage contracts – (2) Rights re matrimonial	
home excepted	52-1
Correlator	52-1
Commentary	52-1
52§1.01	Who may enter
52§1.02	Timing of
52§1.03	What constitutes
52§1.04	Changes to common law
52§1.05	Enforceability
Subject-Matter of Marriage Contract	
52§2.01	Introduction
52§2.02	Clause (a) Ownership in or division of property
52§2.03	Clause (b) Support obligations
52§2.04	Clause (c) Children
52§2.05	Clause (d) Any other matter
Matrimonial Home	
52§3.01	Introduction
SECTION 53(1) Cohabitation agreements – (2) Effect of marriage	
on agreement	53-1
Correlator	53-1
Commentary	53-1
53§1.01	Introduction
Subject-Matter of Cohabitation Agreement	
53§2.01	Clause (a) Ownership in or division of property
53§2.02	Clause (b) Support obligations
53§2.03	Clause (c) Children
Marriage	
53§3.01	Effect of marriage
Pre-Act Contracts	
53§4.01	General
SECTION 54 Separation agreements 54-1	
Correlator	54-1
Commentary	54-1
54§1.01	Parties
54§1.02	Timing
54§1.03	Agreements characterized as separation agreements
54§1.04	Termination of separation agreements
Subject-Matter	
54§2.01	Clause (a) Ownership in or division of property
54§2.02	Clause (b) Support obligations

TABLE OF CONTENTS

54§2.03	Clause (c) Children	
54§2.04	Other matters	
SECTION 55(1)	Form of contract – (2) Capacity of minor –	
(3) Guardian attorney – (4) P.G.T.		55-1
Correlator		55-1
Commentary		55-1
55§1.01	Formalities of contract	
55§1.02	Failure to comply	
55§1.03	Authority of counsel to bind client	
55§1.04	Implied terms	
55§1.05	Trusts, conveyances	
55§1.06	Other cases	
55§2.01	Capacity of minors	
55§3.01	Mentally incompetent persons	
SECTION 56(1)	Contracts subject to best interests of child – (1.1)	
Contracts subject to child support guidelines – (2) Clauses requiring		
chastity – (3) Idem – (4) Setting aside domestic contract – (5)		
Barriers to remarriage – (6) Idem – (7) Application of subsecs.		
(4, 5, 6)		56-1
Correlator		56-2
Commentary		56-2
56§1.01	Best interests of child	
56§2.01	Clauses requiring chastity	
56§3.01	Setting aside domestic contract	
56§3.02	Clause (a) Failure to disclose	
56§3.03	Clause (b) Lack of understanding	
56§3.04	Clause (c) Law of contract	
56§3.05	Remedy	
56§4.01	Removal of barriers	
56§5.01	General	
SECTION 56.1(1)	Provisions re pension plan, family law valuation	
date – (2) Immediate transfer of lump sum – (3) Division of pension		
payments – (4) Restrictions re certain pension plans – (5) Valuation		
– (6) Transition, family law valuation date – (7) Transition, previous		
domestic contracts		56.1-1
Correlator		56.1-2
Commentary		56.1-2
SECTION 57	Rights of donors of gifts	57-1
Correlator		57-1
Commentary		57-1
57§1.01	Introduction	
SECTION 58	Contracts made outside Ontario	58-1
Commentary		58-1
58§1.01	Introduction	

58§1.02	Clause (a) Proper law	
58§1.03	Clause (b) Limitation	
58§1.04	Clause (c) Children	
SECTION 59(1)	Paternity agreements – (1.1) Child support guidelines – (2) Absconding respondent – (3) Bail – (4) Capacity of minor – (5) Application to existing agreements – (6) Transitional provision	59-1
	Correlator	59-2
	Commentary	59-2
	59§1.01 Introduction	
SECTION 59.1(1)	Family arbitrations, agreements and awards – (2) Conflict	59.1-1
	Commentary	59.1-1
	59.1§1.01 Introduction	
	59.1§2.01 Conflict with <i>Arbitrations Act</i>	
SECTION 59.2(1)	Other third-party decision-making processes in family matters – (2) Advice	59.2-1
	Commentary	59.2-1
	59.2§1.01 Introduction	
	59.2§1.02 Choice of law	
	59.2§2.03 Independent advice	
SECTION 59.3	Contracting out	59.3-1
	Commentary	59.3-1
	59.3§1.01 Introduction	
SECTION 59.4	No agreement in advance of dispute	59.4-1
	Commentary	59.4-1
	59.4§1.01 Retrospective operation	
SECTION 59.4.1(1)	Award re pension plan, Family law valuation date – (2) Immediate transfer of lump sum – (3) Division of pension payments – (4) Restrictions re certain pension plans – (5) Valuation – (6) Transition, family law valuation date – (7) Transition, previous family arbitration awards	59.4.1-1
	Correlator	59.4.1-2
	Commentary	59.4.1-2
SECTION 59.5	Status of awards [Repealed]	59.5-1
SECTION 59.6(1)	Conditions for enforceability – (2) Certificate of independent legal advice	59.6-1
	Commentary	59.6-1
	59.6§1.01 Enforceability	
	59.6§1.02 Formalities of agreement	
	59.6§1.03 Independent legal advice	
	59.6§1.04 Requirements of s. 38 of the <i>Arbitrations Act, 1991</i>	
	59.6§1.05 Arbitrations compliance	

TABLE OF CONTENTS

59.6§2.01 Certificate of solicitor
SECTION 59.7(1) Secondary arbitration – (2) Definition 59.7-1
Commentary 59.7-1
59.7§1.01 Secondary arbitration
59.7§1.02 Differing formal requirements and conditions
precedent
59.7§1.03 Case law
SECTION 59.8(1) Enforcement – (2) Application or motion – (3) Notice,
supporting documents – (4) Order – (5) Pending proceeding – (6)
Unusual remedies 59.8-1
Commentary 59.8-2
59.8§1.01 Introduction
59.8§2.01 Enforcement
SECTION 60(1) Application of Act to existing contracts – (2) Contracts
entered into before 1st day of March, 1986 –(3) Idem. 60-1
Correlator 60-1
Commentary 60-1
60§1.01 Subsec. (1) Existing contracts
60§1.02 Subsec. (2) Contracts made in contemplation
of Act
60§1.03 Subsec. (3) Pre-Act transfers

PART V DEPENDANTS’ CLAIM FOR DAMAGES 61-1

Introduction 61-1
SECTION 61(1) Right of dependants to sue in tort – (2) Damages in
case of injury – (3) Contributory negligence – (4) [Repealed] . 61-1
Correlator 61-2
Commentary 61-2
61§1.01 Introduction
61§1.02 Who may claim
61§1.03 Derivative claim
61§1.04 Fault or neglect
61§1.05 Damages
61§1.06 Contributory negligence
SECTION 62(1) Offer to settle for global sum – (2) Apportionment –
(3) Payment before apportionment – (4) Payment may be
postponed. 62-1
Commentary 62-1
62§1.01 Introduction
SECTION 63 Assessment of damages, insurance. 63-1
Commentary 63-1
63§1.01 Introduction

PART VI AMENDMENTS TO THE COMMON LAW 64-1

SECTION 64(1) Unity of legal personality abolished – (2) Capacity of married person – (3) Purposes of subsecs. (1, 2) 64-1
 Commentary 64-1
 64§1.01 Introduction

SECTION 65 Actions between parent and child. 65-1

SECTION 66 Recovery for prenatal injuries. 66-1

SECTION 67 Domicile of minor 67-1

SECTION 68 Parental liability for torts of child: onus of proof [Repealed.] 68-1

GENERAL 69-1

SECTION 69(1) Regulations – (2) Same – (3) Same – (4) Same. 69-1
 Commentary 69-5
 69§1.01 Introduction
 69§2.01 Child Support Guidelines

SECTION 70(1) Application of ss. 5-8 – (2) Application of Part II – (3) Interpretation of existing contracts 70-1
 Correlator 70-1
 Commentary 70-2
 70§1.01 Retrospective operation
 70§1.02 “Adjudicated”
 70§1.03 “Settled”
 70§2.01 Matrimonial home
 70§3.01 Domestic contracts

APPENDIX

CHILD SUPPORT GUIDELINES, O. Reg. 391/97 G-1
 Commentary G-32.3
 Child Support Guidelines. G-32.3
 Introduction
 G1§1.01 Background
 G1§1.02 Statutory framework
 G1§1.03 Joint parental responsibility
 G1§1.04 Underlying assumptions
 G1§1.05 Priority of child support
 G1§1.06 Right of the child
 Objectives
 G2§1.01 Objectives

TABLE OF CONTENTS

The Tables

- G3§1.01 The presumptive rule
- G3§2.01 The tables
- G3§2.02 Residence
- “Special or Extraordinary Expenses”
- G3§3.01 Introduction
- G3§3.02 Application
- G3§3.03 Guiding principle
- G3§4.01 Statutory considerations
- G3§5.01 Expenses
- G3§6.01 Child care expenses
- G3§7.01 Health expenses
- G3§8.01 Primary or secondary education
- G3§9.01 Post-secondary education
- G3§10.01 Extra-curricular activities
- G3§11.01 Proof of expenses
- G3§12.01 Orders

Special Situations

- G4§1.01 Income over \$150,000
- G4§1.02 Appropriateness
- G4§1.03 Disclosure
- G4§2.01 Spouse in place of a parent
- G4§3.01 Children over age of majority
- G4§4.01 Split custody
- G4§4.02 Shared custody

Undue Hardship

- G5§1.01 Introduction
- G5§2.01 Undue hardship
- G5§2.02 The request
- G5§2.03 Two-step process
- G5§2.04 Enumerated grounds
- G5§3.01 Debts
- G5§3.02 Access costs
- G5§3.03 Legal duty to support another person
- G5§3.04 Legal duty to support child
- G5§3.05 Legal duty to support sick or disabled persons
- G5§4.01 Standards of living
- G5§5.01 Where undue hardship found

Orders

- G6§1.01 Form of order
- G6§2.01 Medical and dental insurance
- G6§3.01 Prior agreements or orders
- G6§4.01 Consent orders
- G6§5.01 Entitlement

Income

- G7§1.01 Introduction
- G8§2.01 Stipulation as to income
- G8§3.01 Determination of income
- G8§3.02 Schedule III
- G8§3.03 Specific adjustments
 - (a) Specified deductions
 - (b) Support
 - (c) Investment income and expenses
 - (d) Self-employment
 - (e) Partners
 - (f) Stock options
- G8§4.01 Pattern of income
- G8§5.01 Parent is a shareholder

Imputing Income

- G8§6.01 Introduction
- G8§6.02 Proof
- G8§6.03 Clause (a) Intentional under-employment
- G8§6.04 Clause (b) Exemption from income tax
- G8§6.05 Clause (c) Foreign tax rates
- G8§6.06 Clause (d) Income diversion
- G8§6.07 Clause (e) Income from property
- G8§6.08 Clause (f) Failure to disclose
- G8§6.09 Clause (g) Unreasonable deduction of expenses
- G8§6.10 Low tax rate
- G8§6.11 Benefits from a trust
- G8§6.12 Quantum
- G8§6.13 Appeals
- G8§7.01 Non-resident

Disclosure of Income

- G9§1.01 Mandatory disclosure
- G9§1.02 Time for disclosure
- G9§1.03 Disclosure by claimant
- G9§2.01 Failure to comply

Continuing Obligation to Disclose

- G10§1.01 Continuing disclosure
- G10§2.01 Payor's obligation
- G10§3.01 Recipient's obligations
- G10§4.01 Parent below minimum income
- G10§5.01 Time for delivery
- G10§6.01 Failure to comply
- G10§7.01 Limitation

Other Considerations

TABLE OF CONTENTS

G11§1.01 Income taxes
G11§2.01 Child support agreements
G11§3.01 Denial of access
G11§4.01 Refusal to communicate
G11§4.02 Parental reconciliation

PRACTICE..... PRAC-1

PR§1 Family Law Rules
PR§2 Commencement of proceedings
 (a) Originating process
 (b) Parties to action
PR§3 Service of Process
PR§4 Interim Relief
 (a) Claims for Interim Relief
 (b) Interim Disbursements
 (c) Valuation
 (d) Certificate of Pending Litigation
PR§5 Practice
 (a) Financial Statements
 (b) Confidentiality
PR§6 Pleadings
PR§7 Discovery
 (a) Discovery of documents
 (b) Questioning
 (c) Examination by expert
PR§8 Offers to Settle
PR§9 Prejudgment Interest
PR§10 Orders and Judgments
PR§11 Costs
PR§12 Appeals
 (a) Stay pending appeal