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HANDLING A FAMILY LAW MATTER IN ONTARIO

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Publisher's Special Release Note 2021

The pages in this work were reissued in September 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the September 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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Introduction

This publication is an all-in-one practical guide that enables the lawyer or law clerk to handle a family law matter in Ontario. The work is a comprehensive guide organized in the order a family law lawyer may confront the issues in a typical family law file. Each chapter begins with a discussion of the law, procedure and the issues that may arise. This discussion is meant to give a practical background in the subject with tips for the practitioner. The discussion is then followed with checklists, precedents and forms — the practical tools to enable the lawyer or law clerk to do his or her job.

What's New

This release features updates to Chapter 3 (Jurisdiction); Chapter 14 (Parenting Matters); Chapter 15 (Child Support); Appendix E (Author Commentary).

Highlights

Parenting Matters — Open Courts and Sealing Orders — The test to be followed by a court in exercising its discretion to limit the openness of the proceeding and to grant a sealing order is a three-part test. In order to succeed, a moving party must establish that: (1) court openness poses a serious risk to an important public interest; (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and (3) as a matter of proportionality, the benefits of the order outweigh its negative effects. When making a determination of an important public interest, the court may consider evidence in the abstract and at the level of general principles that extend beyond the parties to the particular dispute. By contrast, in the second stage of the analysis, in the determination of whether that interest is at “serious risk”, the court must make a fact-based finding that is necessarily made in context. In this sense, the identification of, on the one hand, an important interest and, on the other, the seriousness of the risk to that interest are, theoretically, at least, separate and qualitatively distinct operations. Furthermore, disclosure of private information impacting an individual’s dignity, leads to the potential for a serious risk of harm justifying a sealing order: *Sherman Estate v. Donovan*, 2021 SCC 25, 2021 CarswellOnt 8339 (S.C.C.).

Child Support — Child Support is the Right of the Child/The Right of Set Off — Child support is the “right of the child” and “cannot be bargained away by the parents”. The court is not bound by an agreement between parents dealing with the payment of child support. While such an agreement is a factor to consider, the court retains its discretion to order retroactive or ongoing support in an amount it deems appropriate based on the circumstances of the case and the *Guidelines: Michel v. Graydon*, 2020 SCC 24, 2020 CarswellBC 2302 (S.C.C.).

ProView Developments

Your ProView edition of this product now has a new, modified layout:

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