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ONTARIO FAMILY LAW ACT MANUAL

Terry W. Hainsworth
Release No. 3, July 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in October 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 October 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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What's New in this Update:

- In *Nault v. Nault*, 2022 ONSC 904 (Ont. S.C.J.), the court dealt with the issue of inflation and indexing of support. The court noted that the use of indexing support orders had not been widely applied in the recent low-inflationary era. However, as inflation has risen, it may be appropriate to reconsider its application respecting spousal support awards in light of such rising inflation. In that case, the court added a C.P.I. indexing clause to an original non-indexed order. See § 4.218 Indexing – Introduction.
- The concept of the delay will have different consequences where the order is not a child support order. In cases of spousal and parental support, the quantum of support ordered payable by the court is presumed to be correct until the parties or a court order determines that the quantum is no longer appropriate. Thus, there is no presumptive entitlement to increases commensurate with the payor's income as is the case with child support. In *A.E. v. A.E.*, 2021 ONSC 8189 (Ont. S.C.J.), the court concluded that despite the Supreme Court of Canada's recent revisions to the law of retroactive child support, the applicable framework for the determination of retroactive spousal support remains as set out in *Kerr v. Baranow*, 2011 SCC 10. That case limited the issue of retroactivity to 3 years unless the issue was "broached" before then. See also, in this respect, *Nault v. Nault*, 2022 ONSC 904 (Ont. S.C.J.). See § 4:220 Priority to child support.
- In determining the amount of income to be imputed, the court must realistically assess, on a rational basis, the ability of the payor to generate such income: *D. (D.) v. D. (H.)*, 2015 ONCA 409 (Ont. C.A.). See § 9:80 Quantum.

ProView Developments

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

- The opening page is now the title page of the book as you would see in the print work
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