

**PART I**

**CHAPTER 1**

**INTRODUCTION**

1	Family Law: A Human Experience.....	1-2
2	The Dual Role of Family Lawyers.....	1-2
3	Legislative Jurisdiction .....	1-2
4	Inferior and Superior Courts.....	1-3
5	The Dynamic Nature of Family Law .....	1-3
6	The Diversity of Family Law: Creating a Workable Practice .....	1-4

**CHAPTER 2**

**PROFESSIONAL OBLIGATIONS**

1	The Law Society of Alberta .....	2-2
2	The <i>Code of Conduct</i> .....	2-2
2.1	Competence .....	2-3
2.2	Quality of Service .....	2-3
2.3	Confidentiality.....	2-4
2.4	Communications .....	2-4
2.5	Conflicts of Interest.....	2-5
2.6	Withdrawal from Representation .....	2-6
2.7	Independent Legal Representation .....	2-7
2.8	Undertakings and Trust Conditions .....	2-7
3	Access to Justice.....	2-8
3.1	Alternative Dispute Resolution.....	2-8
3.2	Self-Represented Parties.....	2-9
3.3	Limited-Scope Retainers .....	2-12
3.4	Marginalized Persons .....	2-14
4	Maintaining the Skills and Ability to Practice.....	2-15
4.1	Continuing Professional Development .....	2-15
4.2	Work-Life Balance .....	2-16
4.3	ASSIST.....	2-16
4.4	Law Society of Alberta Practice Review .....	2-17
5	Maintaining Relationships with Opposing Counsel .....	2-18

**CHAPTER 3****THE BUSINESS OF FAMILY LAW**

1	Forming a Family Law Practice .....	3-2
1.1	Impact of Family Lawyers .....	3-2
1.2	Ethical Practice.....	3-2
1.3	Building a Family Law Practice.....	3-3
1.4	Firms and Sole Practitioners .....	3-4
1.5	Strategic Networking.....	3-7
2	Office Staff and Systems.....	3-10
2.1	Office Systems.....	3-10
2.2	A Lawyer's Responsibilities .....	3-11
2.3	A Legal Assistant's Responsibilities.....	3-13
2.4	Office Resources .....	3-14
2.5	The File .....	3-18
2.6	File Management .....	3-22
2.7	Discussing Legal Fees .....	3-26
2.8	Estimating Legal Fees.....	3-27
2.9	Retainer .....	3-30
2.10	Retainer Agreements .....	3-31
2.11	Security for Fees .....	3-31
2.12	Billing Practices.....	3-32
2.13	Collection of Accounts .....	3-34
3	Communication.....	3-34
3.1	General Communication Principles.....	3-34
3.2	Electronic Communication.....	3-35
3.3	Data Security .....	3-36
3.4	Communication Options .....	3-36
4	Refusing a Client Relationship.....	3-37
4.1	When to Refuse a Potential Client .....	3-37
4.2	When and How to Withdraw from a File .....	3-38
5	Appendix List.....	3-39

**CHAPTER 4****CLIENT RELATIONSHIPS**

1	Introduction.....	4-2
2	The Initial Interview.....	4-2
2.1	Before the Initial Interview.....	4-3
3	Interviewing Clients .....	4-4
3.1	The Client's State of Mind .....	4-4
3.2	The Lawyer's State of Mind .....	4-5
3.3	Trauma Informed Practices .....	4-5
3.4	High Conflict Cases .....	4-5
3.5	Managing the Interview .....	4-6
3.6	Fact Gathering.....	4-8
3.7	Legal Issues.....	4-9
3.8	Parenting After Separation Course .....	4-9
3.9	Parenting Considerations .....	4-10
3.10	Discussing Child Support.....	4-11
3.11	Discussing Spousal Support.....	4-11
3.12	Discussing Property Division .....	4-12
3.13	Possession of the Family Residence .....	4-13
3.14	Discussing Urgent Matters .....	4-13
3.15	Jurisdictional Issues.....	4-16
3.16	Advice Regarding Estate Matters.....	4-17
3.17	Procedural Options .....	4-17
3.18	Post-Interview Follow Up.....	4-18
4	Managing Client Expectations .....	4-19
4.1	Address Expectations Early .....	4-19
4.2	Provide Updates .....	4-20
4.3	Confirm Advice and Instructions in Writing .....	4-20
4.4	Clients with Mental Health Issues.....	4-20
4.5	Failure to Effectively Manage Client Expectations.....	4-21
4.6	Maintaining Positive Relationships with Clients .....	4-22
4.7	Dealing with the Influence of Third Parties .....	4-24
5	Appendix List.....	4-25

## CHAPTER 5

### DISPUTE RESOLUTION OPTIONS

1	Introduction.....	5-2
1.1	Ethical and Statutory Obligations of Lawyers.....	5-2
2	Dispute Resolution Options .....	5-4
2.1	Party-Party Resolution.....	5-4
2.2	Mediation.....	5-9
2.3	Collaborative Law.....	5-11
2.4	Arbitration .....	5-14
2.5	Litigation .....	5-16
3	Appendix List.....	5-21

## CHAPTER 6

### PRACTICE IN RURAL AREAS

1	Introduction.....	6-2
2	Access to Justice.....	6-2
2.1	Court Locations .....	6-2
2.2	Virtual Court Attendance.....	6-3
2.3	Electronic and Online Document Filing.....	6-5
2.4	Access to Legal Representation.....	6-6
3	Practice Considerations for Rural Lawyers .....	6-7
3.1	Conflicts of Interest.....	6-7
3.2	Drafting Court Orders.....	6-7
3.3	Necessary Areas of Expertise .....	6-8
3.4	Transportation .....	6-8
3.5	Resources for Family Violence .....	6-8
4	Community Supports .....	6-9
4.1	Support for Lawyers .....	6-9
4.2	Practical Suggestions for Rural Lawyers .....	6-10
4.3	Benefits of a Rural Family Law Practice .....	6-10

**CHAPTER 7****RESOURCES**

1	General Resources for Family Lawyers .....	7-3
1.1	Legislation and Rules.....	7-3
1.2	Publications and Other Resources.....	7-4
1.3	Software.....	7-5
1.4	Contacts and Organizations .....	7-5
2	Government Resources – Family Justice Services.....	7-5
2.1	Court and Justice Services .....	7-5
2.2	Mediation Services.....	7-5
2.3	Family Court Counsellors/Intake Services .....	7-6
2.4	Emergency Protection Orders.....	7-7
2.5	Restraining Orders and Protection Orders .....	7-7
2.6	Family Support Order Services.....	7-7
2.7	King's Bench Child Support Resolution Program.....	7-8
2.8	Maintenance Enforcement Program.....	7-8
2.9	Child Support Recalculation Program.....	7-9
3	Collaborative Law and Mediation Resources.....	7-9
4	Counsellors, Psychologists, Psychiatrists, and Life Coaches for Clients.....	7-10
4.1	Counselling Services.....	7-10
4.2	Divorce and Life Coaches .....	7-10
5	Experts.....	7-11
5.1	Appraisers.....	7-11
5.2	Accountants.....	7-11
5.3	Business Valuators .....	7-12
5.4	Actuaries/Pension Valuators.....	7-12
5.5	Guardianship/Home Study Assessors .....	7-12
5.6	Psychologists .....	7-12
5.7	Parenting Coordinators.....	7-12
5.8	Lawyers in Other Practice Areas.....	7-13
5.9	Bankruptcy Trustees .....	7-13
5.10	Financial Planners.....	7-13
5.11	Capacity Assessors .....	7-13
5.12	Children's Counsel/Counsel for the Child .....	7-13

6	Seminars for Clients .....	7-14
6.1	Parenting After Separation .....	7-14
6.2	Parenting After Separation for Families in High Conflict .....	7-14
6.3	Community Courses.....	7-14
7	Literature for Clients.....	7-14

**PART II****CHAPTER 1****DIVORCE**

1	Introduction to Divorce .....	1-2
2	<i>Divorce Act</i> .....	1-2
3	Preliminary Considerations Before Filing a Statement of Claim for Divorce .....	1-3
3.1	Jurisdiction.....	1-3
3.2	Reconciliation.....	1-4
3.3	Proof of Marriage .....	1-5
3.4	Picture of Party to Be Served.....	1-5
3.5	Grounds .....	1-6
3.6	Children of the Marriage.....	1-7
3.7	Duties of the Parties .....	1-7
3.8	Parenting After Separation Course .....	1-8
3.9	Corollary Relief .....	1-9
3.10	Allegations of Sexual Abuse .....	1-9
4	Statement of Claim for Divorce.....	1-10
4.1	Form FL-1 Statement of Claim for Divorce .....	1-10
4.2	Form FL-8 Joint Statement of Claim for Divorce .....	1-13
4.3	Filing and Service .....	1-14
5	Procedure for Defendant Served with a Statement of Claim for Divorce .....	1-16
6	Closing the Divorce Pleadings.....	1-17
7	Divorce Without Appearance by Parties or Counsel .....	1-17
7.1	Documents Required .....	1-18
7.2	Scenarios.....	1-19
7.3	Form FL-23 Affidavit of Applicant for Divorce.....	1-20
7.4	Form FL-21 Request for Divorce .....	1-22

7.5	Forms FL-25 and FL-26 Divorce Judgment .....	1-22
7.6	Expedited Divorce .....	1-23
7.7	Certificate of Divorce .....	1-23
7.8	Reporting Letter to Client .....	1-24
8	Appendix List.....	1-24

## CHAPTER 2

### PARENTING AND GUARDIANSHIP

1	Introduction to Parenting and Guardianship .....	2-3
2	Alternative Dispute Resolution .....	2-3
3	Parenting and Decision-Making Authority under the <i>Divorce Act</i> .....	2-6
	3.1    Sole Decision-Making Authority.....	2-6
	3.2    Joint Decision-Making Authority .....	2-6
	3.3    Split Decision-Making Authority .....	2-7
	3.4    Parenting Time .....	2-7
	3.5    Contact Order by Non-Parents.....	2-8
4	Parenting Claims.....	2-8
	4.1    Procedure .....	2-8
	4.2    Interim Orders .....	2-8
	4.3    Permanent Orders.....	2-9
	4.4    Third Party Claims .....	2-9
	4.5    Parenting Claims After Divorce Judgment.....	2-9
5	Variation of Parenting Orders.....	2-9
	5.1    Procedure .....	2-9
	5.2    Variation of Interim Orders .....	2-10
	5.3    Variation of Permanent Orders.....	2-10
6	Proceedings Under the <i>Family Law Act</i> .....	2-11
	6.1    Jurisdiction.....	2-11
	6.2    Concurrent Proceedings .....	2-11
	6.3    Procedure .....	2-11
	6.4    Best Interests of the Child .....	2-12
7	Guardianship.....	2-12
	7.1    Introduction .....	2-12
	7.2    Parents as Guardians .....	2-13

## ALBERTA FAMILY LAW PRACTICE MANUAL

7.3	Third Parties as Guardians .....	2-13
7.4	Application by the Child .....	2-13
7.5	Testamentary Guardians .....	2-13
7.6	Termination of Guardianship.....	2-13
7.7	Guardianship Under the <i>Child, Youth and Family Enhancement Act</i> .....	2-14
7.8	Applications for Guardianship .....	2-14
7.9	Consent to Guardianship.....	2-14
8	Parenting .....	2-15
8.1	Content of Parenting Orders.....	2-15
8.2	Parenting Time .....	2-16
8.3	Variation of Parenting Order.....	2-16
9	Contact .....	2-16
9.1	Contact by Parents.....	2-17
9.2	Contact by Persons Standing in the Place of a Parent .....	2-17
9.3	Contact by Grandparents.....	2-17
9.4	Leave of the Court.....	2-17
9.5	Variation of Contact Order .....	2-17
10	Enforcement of Time with a Child.....	2-18
10.1	Enforcement Order.....	2-18
10.2	Variation of Enforcement Order .....	2-18
10.3	Failure to Exercise Time.....	2-18
11	Extra-Provincial Orders .....	2-19
11.1	Variation Proceedings .....	2-19
12	<i>Parents Patriae Jurisdiction</i> .....	2-19
13	Appendix List.....	2-19

## CHAPTER 3

### CHILD SUPPORT

1	Introduction to Child Support.....	3-2
2	Philosophy Behind the Child Support Guidelines .....	3-3
3	Objectives of the Child Support Guidelines.....	3-4
4	The Child Support Guidelines .....	3-4
4.1	Mandatory Use of the Child Support Guidelines .....	3-4
4.2	The Court's General Discretion to Depart from the Child Support Guidelines.....	3-5

4.3	Variations of Child Support.....	3-6
4.4	Retroactive Child Support Orders .....	3-7
5	Calculation of Child Support .....	3-8
5.1	Step 1: Determine Basic Child Support Using Tables.....	3-9
5.2	Step 2: Calculation of Section 7 Expenses.....	3-15
5.3	Step 3: Determine if there is a Claim for Undue Hardship.....	3-17
5.4	Effective Budgets .....	3-19
5.5	Other Special Circumstances .....	3-19
6	Form of Child Support Order .....	3-21
7	Obligations for Financial Disclosure .....	3-22
8	Application for Child Support .....	3-24
8.1	Procedure under the <i>Family Law Act</i> .....	3-24
9	Child Support Recalculation Program .....	3-25

## CHAPTER 4

### SPOUSAL AND PARTNER SUPPORT

1	Introduction to Spousal and Adult Interdependent Partner Support .....	4-2
2	Spousal Support under the <i>Divorce Act</i> .....	4-2
3	Theories of Spousal Support.....	4-3
3.1	Basic Social Obligation Model and Independent Marriage Model.....	4-3
3.2	Compensatory Support.....	4-4
3.3	Non-Compensatory Support .....	4-5
3.4	Contractual Support.....	4-7
4	Variation Applications and Review Applications .....	4-8
5	Practical Issues.....	4-9
6	<i>Spousal Support Advisory Guidelines</i> .....	4-11
7	The <i>Family Law Act</i> .....	4-11
7.1	When to Proceed under the <i>Family Law Act</i> .....	4-11
7.2	Spousal and Adult Interdependent Partner Support .....	4-12
7.3	Spousal and Adult Interdependent Partner Support Agreements .....	4-13
7.4	Termination of Spousal Support or Adult Interdependent Partner Support.....	4-14
7.5	Interim Orders .....	4-14
7.6	Financial Disclosure.....	4-15
8	Proceeding in the Court of Justice or Court of King's Bench .....	4-15

9	Tax Consequences.....	4-16
---	-----------------------	------

## CHAPTER 5

### PROPERTY

1	Introduction to Property.....	5-3
2	<i>Family Property Act</i> .....	5-3
3	Limitation of Actions .....	5-3
4	Disclosure.....	5-4
5	Classification of Property.....	5-6
	5.1    Section 7(2) Property.....	5-6
	5.2    Section 7(3) Property.....	5-6
	5.3    Section 7(4) Property.....	5-6
6	Valuation of Property .....	5-7
	6.1    Expert Witnesses.....	5-7
	6.2    Particular Assets .....	5-8
	6.3    Income Tax Considerations .....	5-12
7	Procedural Issues .....	5-13
	7.1    Commencement Documents.....	5-13
	7.2    Third Parties .....	5-13
	7.3    Statements of Property.....	5-13
	7.4    Preservation of Property .....	5-14
	7.5    Certificate of <i>Lis Pendens</i> .....	5-15
	7.6    Disposition of Household Goods.....	5-15
8	Evidentiary Issues.....	5-15
	8.1    Tracing .....	5-16
	8.2    Section 8 Factors .....	5-16
	8.3    Documentary Evidence.....	5-18
9	Distribution of Property .....	5-19
	9.1    Powers of the Court.....	5-19
	9.2    Pensions .....	5-19
	9.3    RRSPs .....	5-23
	9.4    Canada Pension Plan.....	5-23
	9.5    Debts.....	5-24
10	Family Home Possession .....	5-24

10.1	Exclusive Possession .....	5-24
10.2	<i>Law of Property Act</i> .....	5-25
11	Unjust Enrichment .....	5-26
11.1	Constructive or Resulting Trust.....	5-28
11.2	<i>Quantum Meruit</i> .....	5-30
12	Appendix List.....	5-31

## CHAPTER 6

### PROTECTION ORDERS

1	Introduction to Protection Orders .....	6-2
2	<i>Protection Against Family Violence Act</i> Definitions.....	6-2
2.1	Family Members.....	6-2
2.2	Family Violence .....	6-3
2.3	Injury .....	6-4
2.4	Residence.....	6-4
2.5	Stalking.....	6-4
3	Protection Orders.....	6-5
3.1	Emergency Protection Orders.....	6-5
3.2	King's Bench Protection Orders .....	6-11
3.3	Service of Protection Orders.....	6-12
3.4	Breaches of Protection Orders .....	6-12
3.5	Warrant Permitting Entry .....	6-13
4	Restraining Orders.....	6-13
4.1	Test for Restraining Orders.....	6-14
4.2	Family Restraining Orders .....	6-16
4.3	Civil Restraining Orders .....	6-16
4.4	No Contact Orders.....	6-17
4.5	Breaches of Orders .....	6-17

**CHAPTER 7****ADOPTION**

1	Introduction.....	7-2
1.1	Ministry of Children and Family Services Adoptions.....	7-2
1.2	Private Adoptions .....	7-2
1.3	Inter-Country Adoptions .....	7-3
1.4	Step-Parent Adoptions.....	7-3
2	Effect of Adoption .....	7-3
2.1	Payment.....	7-3
2.2	Advertising.....	7-4
3	Jurisdiction .....	7-4
4	Pre-Application Procedures .....	7-5
4.1	Direct Placements.....	7-5
4.2	Adoption of First Nation Individuals.....	7-6
5	Form of Application.....	7-6
5.1	Direct Placements.....	7-6
5.2	Step-Parent Adoptions .....	7-7
6	Consent to Adoption .....	7-8
6.1	Who Must Consent.....	7-8
6.2	Form of Consent.....	7-8
7	Service Requirements .....	7-10
7.1	Direct Placements and Step-Parent Adoptions.....	7-10
7.2	Interlocutory Applications .....	7-11
8	Adoption Hearing .....	7-11
8.1	Adjournments .....	7-11
8.2	Other Requirements.....	7-11
9	Adoption Order.....	7-11
10	Appeals.....	7-12
11	Setting Aside Adoption Orders .....	7-12
12	Post Adoption Registry.....	7-13
13	Prescribed Forms.....	7-14

## CHAPTER 8

### EXTRAORDINARY REMEDIES

1	Introduction to Extraordinary Remedies.....	8-2
2	Judicial Review.....	8-2
3	Injunction.....	8-3
	3.1    Anton Piller Order .....	8-4
	3.2    Mareva Injunction .....	8-5
4	Replevin Order .....	8-6
5	<i>Family Property Act</i> Relief .....	8-6
6	Conclusion.....	8-7

## CHAPTER 9

### CHILD WELFARE

1	Introduction.....	9-3
2	Applicable Statutes, Regulations, and Rules.....	9-3
	2.1    The <i>Child, Youth and Family Enhancement Act</i> .....	9-3
	2.2    An Act Respecting First Nations, Inuit and Métis Children, Youth, and Families ....	9-4
	2.3    The <i>Family Law Act</i> and the <i>Divorce Act</i> .....	9-5
	2.4    Regulations.....	9-7
	2.5    Additional Related Statutes.....	9-7
3	Introduction to the <i>Child, Youth and Family Enhancement Act</i> .....	9-8
4	<i>Child, Youth and Family Enhancement Act</i> Definitions and Interpretations .....	9-8
	4.1    Guiding Principles .....	9-9
	4.2    In Need of Intervention .....	9-9
	4.3    Matters to be Considered.....	9-10
	4.4    Procedural Rights.....	9-12
	4.5    Office of the Child and Youth Advocate Alberta .....	9-12
5	<i>Child, Youth and Family Enhancement Act</i> Part 1: Intervention Services .....	9-14
	5.1    Division 1: Preliminary Matters .....	9-14
	5.2    Division 2: Agreements.....	9-14
	5.3    Division 3: Court Orders.....	9-16
	5.4    Division 4: Secure Services .....	9-29
	5.5    Division 5: Private Guardianship.....	9-29

**ALBERTA FAMILY LAW PRACTICE MANUAL**

6	Financial Assistance to a Caregiver.....	9-30
7	Band Involvement – First Nations Child.....	9-30
8	Evidence.....	9-30
	8.1    Witnesses .....	9-31
	8.2    Confidential Evidence .....	9-32
	8.3    Age of a Child.....	9-32
9	Right to Appear .....	9-32
	9.1    Legal Representation for Children and Youth .....	9-32
	9.2    A Parent's Right to Counsel (Section 7 of the <i>Charter</i> ) .....	9-33
10	Maintenance Enforcement.....	9-33
11	Appeals to the Court of King's Bench of Alberta.....	9-33
	11.1    Stay of an Order Pending Appeal .....	9-34
12	Standard of Review on Appeal.....	9-35
13	Administrative Reviews .....	9-35
	13.1    Appeals of Administrative Reviews to the Appeal Panel .....	9-35
14	Confidentiality, Information, and Records.....	9-36
	14.1    Privileged Information.....	9-36
	14.2    Applying for Information (Disclosure).....	9-36
	14.3    Publication Ban .....	9-37
	14.4    Records.....	9-37
15	Offence .....	9-38

**CHAPTER 10**

**TAX CONSIDERATIONS**

1	Introduction to Income Tax Considerations in Family Law.....	10-2
2	Tax Considerations for the Payment of Support.....	10-2
	2.1    Introduction .....	10-2
	2.2    Support Amount .....	10-3
	2.3    Child Support and Spousal Support.....	10-5
	2.4    Commencement Day .....	10-6
	2.5    Payments to Third Parties.....	10-7
	2.6    Prior Payments .....	10-8
	2.7    Characterizing Support.....	10-8
	2.8    Payment of Arrears .....	10-10

## ALBERTA FAMILY LAW PRACTICE MANUAL

2.9	Registration of Orders/Agreements.....	10-11
2.10	Other Considerations.....	10-12
2.11	Other Benefits and Expenses.....	10-13
3	Property Division .....	10-15
3.1	Introduction .....	10-15
3.2	Rollover of Capital Property.....	10-16
3.3	Corporate Assets.....	10-17
3.4	Attribution .....	10-18
3.5	Principal Residence .....	10-19
3.6	Registered Investments.....	10-20
3.7	Joint and Several Liability.....	10-21
3.8	Deduction of Legal Fees .....	10-22
3.9	Tax Forms .....	10-24
3.10	Useful Links .....	10-24
4	Future Considerations – Digital Currencies and Assets.....	10-24
4.1	Introduction .....	10-24
4.2	Cryptocurrency and Digital Asset Trading.....	10-25
4.3	Capital Taxation.....	10-26
4.4	Personal Ordinary Income .....	10-26
4.5	Useful Links .....	10-26

## CHAPTER 11

### FAMILY LAW AGREEMENTS

1	Introduction.....	11-2
2	Pre-Separation Agreements .....	11-4
2.1	Spousal/Partner Support .....	11-4
2.2	Contribution Towards Expenses.....	11-6
2.3	Children.....	11-6
2.4	Succession Planning.....	11-7
3	Post-Separation Agreements .....	11-7
4	Disclosure.....	11-9
5	<i>Family Property Act</i> .....	11-10
6	Unjust Enrichment and <i>Family Property Act</i> .....	11-11
7	The <i>Divorce Act</i> and <i>Family Law Act</i> .....	11-11

8	Independent Legal Advice .....	11-11
9	The Agreement.....	11-13
9.1	Language .....	11-13
9.2	Organization .....	11-13
9.3	Recitals .....	11-14
9.4	Common Provisions .....	11-14
9.5	Specific Provisions .....	11-15
9.6	Execution of an Agreement .....	11-15
9.7	Retention of the Agreement .....	11-16
10	Appendix List.....	11-16

## CHAPTER 12

### BUSINESSES, FARMS, AND TRUSTS

1	Introduction.....	12-2
2	Support.....	12-3
2.1	Financial Disclosure Obligations .....	12-3
2.2	Addressing Non-Disclosure.....	12-9
2.3	Other Helpful Documents .....	12-10
2.4	Guideline Income Calculation .....	12-12
2.5	Expert Reports (Guideline Income Reports) .....	12-39
2.6	Spousal Support Entitlement .....	12-40
3	Property Division .....	12-40
3.1	Financial Disclosure.....	12-41
3.2	Valuation.....	12-43
3.3	Post-Separation Changes in Value.....	12-49
3.4	Dividing or Distributing the Value of Businesses .....	12-50
3.5	Other Remedies and Concurrent Civil Claims .....	12-59
3.6	Director's Liability.....	12-67
4	Trusts.....	12-68
4.1	Discretionary Trusts .....	12-68
4.2	Where Parents and Children are Beneficiaries .....	12-69
4.3	Where the Spouses are the Sole Beneficiaries.....	12-69
4.4	Where the Children are the Sole Beneficiaries .....	12-70
5	Addressing Misfeasance, Changes in Control, and Shams .....	12-70

## ALBERTA FAMILY LAW PRACTICE MANUAL

6	Double-Counting .....	12-73
6.1	Double-Counting a Business as Income and Property .....	12-74
6.2	Shareholder Loans and Amounts Due to Shareholder.....	12-75
6.3	Dividends and Past Profits .....	12-76
6.4	Counting Only Profitable Years.....	12-77
6.5	Dividends and Share Bonuses .....	12-77
6.6	Expenses Improving Property.....	12-77

### PART III

#### CHAPTER 1

##### NEGOTIATION

1	Introduction to Negotiation .....	1-2
2	Negotiation Goals and Frameworks .....	1-3
2.1	Negotiation Styles .....	1-3
2.2	The Competitive or Positional Strategy.....	1-4
2.3	The Co-Operative Strategy .....	1-5
2.4	Interest-Based or Principled Negotiation.....	1-6
2.5	Best Alternative to a Negotiated Agreement [BATNA] .....	1-7
3	Improving Your Effectiveness as a Negotiator.....	1-8
3.1	Lawyer Preparation .....	1-8
3.2	Preparing the Client .....	1-9
3.3	Receiving Instructions.....	1-10
3.4	Rendering an Agreement in Writing.....	1-11
3.5	Professionalism.....	1-12

#### CHAPTER 2

##### MEDIATION

1	Introduction.....	2-2
2	The Requirement to Mediate .....	2-3
3	The Benefits of Mediation .....	2-6
4	Deciding When to Mediate.....	2-7
5	Choosing a Mediator.....	2-7

## ALBERTA FAMILY LAW PRACTICE MANUAL

6	Ethical Issues.....	2-9
7	The Mediation Process.....	2-9
8	Proper Conduct during Mediation.....	2-11
9	Power Imbalances .....	2-12
10	Identifying and Finalizing the Resulting Agreement .....	2-13
11	The Finances of Mediation.....	2-14
12	Mediation/Arbitration.....	2-15
13	Appendix List.....	2-15

### CHAPTER 3

#### COLLABORATIVE LAW

1	Introduction.....	3-2
2	Training Requirements .....	3-2
3	The Participation Agreement.....	3-2
4	The Process.....	3-3
4.1	The Lawyer's Role .....	3-4
4.2	Involvement of Other Professionals.....	3-5
4.3	Initial Meeting with the Client.....	3-6
4.4	Preparatory Meeting Between Lawyer and Client.....	3-7
4.5	Preparatory Meeting Between the Lawyers.....	3-8
4.6	First Four-Way Meeting.....	3-8
4.7	Debriefing .....	3-9
4.8	Subsequent Four-Way Meetings .....	3-9
4.9	Finalization .....	3-10
5	Collaborative Law vs Mediation.....	3-11
5.1	When Collaborative Law Should Be Used.....	3-11
5.2	When Collaborative Law is Not Appropriate .....	3-12
5.3	Standard of Practice .....	3-12
5.4	Confidentiality and Privilege .....	3-13
5.5	Ending the Process .....	3-13
6	Appendix List.....	3-14

**CHAPTER 4****ARBITRATION**

1	Introduction to Arbitration .....	4-2
2	The <i>Arbitration Act</i> .....	4-2
3	Referral to Arbitration.....	4-5
	3.1     When is Arbitration Appropriate? .....	4-5
	3.2     Selection of an Arbitrator.....	4-5
	3.3     Procedure for Referral .....	4-6
4	Preparing for Arbitration.....	4-6
	4.1     The Lawyer's Role .....	4-7
5	Termination of Arbitration .....	4-8
6	Enforcement of an Arbitrator's Award .....	4-9
7	Remedies .....	4-9
8	Mediation/Arbitration .....	4-10
9	Appendix List.....	4-11

**CHAPTER 5****THE RULES OF COURT**

1	Introduction.....	5-3
2	Organization of the <i>Rules of Court</i> .....	5-3
3	Part 1: Foundational Rules .....	5-4
	3.1     General Rules (Rules 1.1–1.10) .....	5-4
	3.2     Division 1 of the Family Law Rules (Rules 12.1–12.4) .....	5-4
4	Part 2: The Parties to Litigation .....	5-5
	4.1     General Rules (Rules 2.1–2.32) .....	5-5
	4.2     Division 2 of the Family Law Rules (Rules 12.5–12.6) .....	5-6
5	Part 3: Court Actions.....	5-6
	5.1     General Rules (Rules 3.1–3.77) .....	5-6
	5.2     Division 3 of the Family Law Rules (Rules 12.7–12.33).....	5-7
6	Part 4: Managing Litigation .....	5-8
	6.1     General Rules (Rules 4.1–4.37) .....	5-8
	6.2     Division 4 of the Family Law Rules (Rules 12.34–12.36) .....	5-9
7	Part 5: Disclosure of Information.....	5-10

## ALBERTA FAMILY LAW PRACTICE MANUAL

7.1	General Rules (Rules 5.1–5.44) .....	5-10
7.2	Division 5 of the Family Law Rules (Rules 12.37–12.42) .....	5-10
8	Part 6: Resolving Issues and Preserving Rights .....	5-11
8.1	General Rules (Rules 6.1–6.65) .....	5-11
8.2	Division 6 of the Family Law Rules (Rules 12.42–12.47) .....	5-12
9	Part 7: Resolving Claims Without a Full Trial .....	5-13
9.1	General Rules (Rules 7.1–7.11) .....	5-13
9.2	Division 7 of the Family Law Rules (Rules 12.48–12.50) .....	5-13
10	Part 8: Trial.....	5-14
10.1	General Rules (Rules 8.1–8.24) .....	5-14
10.2	Division 8 of the Family Law Rules (Rule 12.51).....	5-14
11	Part 9: Judgments and Orders .....	5-14
11.1	General Rules (Rules 9.1–9.51) .....	5-14
11.2	Division 9 of the Family Law Rules (Rules 12.52–12.54) .....	5-15
12	Part 10: Lawyer's Charges, Recoverable Costs of Litigation, and Sanctions .....	5-16
12.1	General Rules (Rules 10.1–10.55) .....	5-16
12.2	Family Law Rules.....	5-17
13	Part 11: Service of Documents.....	5-17
13.1	General Rules (Rules 11.1–11.32) .....	5-17
13.2	Division 10 of the Family Law Rules (Rules 12.55–12.58) .....	5-18
13.3	Division 11 of the Family Law Rules: Appeals (Rules 12.59–12.71).....	5-19
14	Part 13: Technical Rules (Rules 13.1–13.55).....	5-20
15	Forms.....	5-20

## CHAPTER 6

### DISCLOSURE

1	Introduction to Disclosure .....	6-2
2	Preserving Integrity of the Process .....	6-2
3	Problems Getting Disclosure.....	6-4
3.1	From Your Client.....	6-4
3.2	From the Opposing Party .....	6-5
3.3	Disclosure Requirements in Calculation of Guideline Income.....	6-6
4	Giving Independent Legal Advice.....	6-7
5	Appendix List.....	6-9

**CHAPTER 7**

**INTERLOCUTORY APPLICATIONS**

1	Introduction to Interlocutory Applications .....	7-2
2	Common Types of Applications.....	7-2
2.1	Parenting and Contact.....	7-2
2.2	Guardianship .....	7-4
2.3	Spousal/Partner and Child Support.....	7-5
2.4	Protection Orders .....	7-6
2.5	Preservation of Property .....	7-8
2.6	Document Production .....	7-9
2.7	Production of Financial Information.....	7-10
2.8	Medical/Psychological Assessment or Examination .....	7-11
2.9	Contempt.....	7-11
2.10	Consolidation of Actions .....	7-12
3	Procedure .....	7-13
3.1	Court of King's Bench .....	7-13
3.2	Time for Making Application.....	7-19
3.3	Applications Without Notice .....	7-19
3.4	Filing.....	7-20
3.5	Service .....	7-21
3.6	Hearing .....	7-21
3.7	Orders .....	7-22
3.8	Costs .....	7-22
3.9	Appeals .....	7-23
4	Court of Justice .....	7-24
4.1	Jurisdiction.....	7-24
4.2	Form of Application .....	7-24
4.3	Time for Making Applications .....	7-25
5	Questioning on Affidavits .....	7-26
6	Appendix List.....	7-26

## CHAPTER 8

### CASE MANAGEMENT

1	Court Assistance in Managing Litigation.....	8-2
1.1	Case Management.....	8-2
1.2	Early Intervention Case Conferences.....	8-5
1.3	Case Conferences .....	8-5
2	Judicial Dispute Resolution.....	8-7
3	Summary Proceedings.....	8-8
4	Expedited Trials.....	8-8
5	Virtual Hearings .....	8-9

## CHAPTER 9

### TRIALS

1	Introduction to Family Law Trials.....	9-2
2	Trial at the Court of King's Bench.....	9-2
2.1	Commencing an Action.....	9-2
2.2	Exchanging Information.....	9-5
2.3	Experts' Reports and Evidence .....	9-6
2.4	Types of Experts .....	9-7
2.5	Affidavit of Records.....	9-9
2.6	Questioning.....	9-10
2.7	Offers to Settle .....	9-13
2.8	Notices to Admit.....	9-14
2.9	Witnesses .....	9-15
2.10	Preparing Clients for Trial .....	9-17
2.11	Final Trial Preparation.....	9-18
2.12	Trial Book.....	9-20
2.13	Conduct of a Trial .....	9-23
2.14	Streamlined Trials .....	9-37
3	Court of Justice .....	9-37
3.1	Introduction .....	9-37
3.2	Court of Justice Trial Procedure .....	9-38
3.3	Pleadings .....	9-38

3.4	Disclosure of Financial Information .....	9-38
3.5	Expert Reports and Evidence .....	9-39
3.6	Time Requirements.....	9-39

## CHAPTER 10

### JUDGMENTS AND ORDERS

1	Introduction to Judgments and Orders.....	10-2
2	Court of King's Bench Orders.....	10-2
2.1	Governing Principles .....	10-2
2.2	Preparation of Judgments and Orders.....	10-5
2.3	Content of Judgments and Orders .....	10-8
2.4	Signing Judgments and Orders .....	10-16
2.5	Processing the Order .....	10-17
2.6	Serving the Order .....	10-18
2.7	Appeal Periods .....	10-19
2.8	Correcting, Setting Aside, Varying, and Discharging Judgments and Orders .....	10-19
2.9	Orders Made Without Notice .....	10-20
2.10	Consent Orders and Judgments.....	10-21
2.11	Having an Order Granted Without a Personal Appearance.....	10-22
2.12	Provisional Orders.....	10-23
2.13	Judgments and Orders Subject to Conditions.....	10-23
2.14	Non-Parties.....	10-23
2.15	Registration of Orders.....	10-23
3	Court of Justice Orders .....	10-24
3.1	Practice in Different Districts .....	10-24
3.2	Drafting Orders .....	10-25

**CHAPTER 11****COSTS**

1	Introduction to Costs .....	11-2
2	Order for Costs.....	11-3
2.1	Discretionary .....	11-3
2.2	Entitlement.....	11-3
2.3	Purpose of Costs .....	11-3
3	Classification of Costs .....	11-4
3.1	Party and Party Costs.....	11-4
3.2	Solicitor–Client Costs.....	11-7
3.3	Timing of Submissions to the Courts on Costs.....	11-8
4	Advance (Interim) Costs and Security for Costs.....	11-9
4.1	Application for Security for Costs .....	11-10
4.2	Order for Security for Costs .....	11-10
4.3	Applications and Orders for Advance Costs .....	11-10
4.4	Costs Payable by a Barrister and Solicitor.....	11-11
5	Costs on Appeal .....	11-11
6	Preparing the Bill of Costs.....	11-12
6.1	Schedule C of the <i>Rules of Court</i> .....	11-12
6.2	Disbursements .....	11-12
6.3	Solicitor–Client Bill of Costs .....	11-13
7	Dealing with the Bill of Costs .....	11-13
7.1	Reviewing a Bill of Costs.....	11-13
7.2	Negotiating a Settlement.....	11-13
8	Assessment.....	11-14
8.1	Time for Assessment .....	11-14
8.2	Appointment for Assessment .....	11-14
8.3	Affidavit or Certificate in Support.....	11-14
8.4	Service .....	11-14
8.5	Hearing .....	11-14
8.6	Certification of Costs.....	11-15
8.7	Appeal of Assessment .....	11-15

**CHAPTER 12****APPEALS**

1	Introduction to Appeals in Family Law.....	12-2
2	Factors to Consider in Deciding Whether to Appeal.....	12-2
2.1	Legal Factors .....	12-2
2.2	Economic Factors.....	12-3
2.3	Personal Factors .....	12-4
3	Limitation Periods.....	12-4
4	Types of Appeals.....	12-5
4.1	Appeals to the Court of Appeal.....	12-5
4.2	Appeals to the Court of King's Bench .....	12-7
5	The Court of Appeal Process .....	12-7
5.1	Right to Appeal .....	12-7
5.2	Documents .....	12-8
5.3	Cross-Appeal.....	12-16
5.4	Struck Appeals .....	12-17
5.5	Appeal Applications.....	12-18
6	Discontinuance of an Appeal.....	12-20
7	Judicial Dispute Resolution at the Court of Appeal .....	12-21
8	Hearing Date .....	12-21
8.1	Setting the Date at the Court of Appeal.....	12-21
8.2	Setting the Date at the Court of King's Bench .....	12-22
9	Hearing Preparation .....	12-22
9.1	Review and Update .....	12-22
9.2	New Arguments .....	12-23
10	Hearings at the Court of Appeal.....	12-23
10.1	Location and Time.....	12-23
10.2	Procedure .....	12-24
11	Judgments and Orders .....	12-25
11.1	Costs .....	12-26
12	Practice Directions and Forms.....	12-26
13	Appendix List.....	12-26

## CHAPTER 13

### ENFORCEMENT AND VARIATION OF ORDERS

1	Introduction.....	13-3
2	General Provisions.....	13-3
2.1	<i>Divorce Act</i> .....	13-3
2.2	Enforcement of Court of King's Bench of Alberta Orders .....	13-4
2.3	Enforcement of Support Agreements .....	13-4
2.4	Gathering Information.....	13-4
3	Parenting Orders.....	13-5
3.1	Extra-Provincial Parenting Orders .....	13-5
3.2	Obtaining an Address.....	13-7
3.3	Police Enforcement of Parenting Orders .....	13-7
3.4	Enforcement of Parenting Orders and Enforcement of Time with a Child .....	13-9
4	Maintenance Orders.....	13-11
4.1	Introduction .....	13-11
4.2	<i>The Maintenance Enforcement Act</i> .....	13-12
4.3	Gathering Information About the Debtor.....	13-15
4.4	The Maintenance Enforcement Program .....	13-17
4.5	When to Use the Maintenance Enforcement Program.....	13-18
4.6	Filing an Order with the Director .....	13-19
4.7	The Effect of Filing an Order.....	13-20
4.8	Maintenance Enforcement Program Tips for Lawyers.....	13-26
5	Other Methods of Enforcement .....	13-34
5.1	Demand Letter .....	13-35
5.2	Garnishment or Diversion of Funds .....	13-35
5.3	Garnishment of Federal Payments and Diversion of Benefits .....	13-42
5.4	Default Hearing .....	13-44
5.5	Imprisonment and Committal Orders .....	13-46
5.6	Order for Payment.....	13-47
5.7	Seizure of Property.....	13-48
5.8	Appointment of a Receiver .....	13-49
5.9	Restraining Orders .....	13-50
5.10	Arrest of an Absconding Debtor .....	13-50
5.11	Enforcement of Extra-Provincial and Foreign Maintenance Orders.....	13-50

## ALBERTA FAMILY LAW PRACTICE MANUAL

6	The Child Support Recalculation Program .....	13-51
6.1	Purpose of the Child Support Recalculation Program .....	13-53
6.2	Child Support Recalculation Process.....	13-54
6.3	Mandatory Recalculation Program Clauses .....	13-56
6.4	Eligible Orders .....	13-57
6.5	Child Support Agreements.....	13-59
6.6	Registering with the Recalculation Program .....	13-59
6.7	Withdrawal from the Recalculation Program .....	13-60
6.8	Non-Disclosure of Income .....	13-60
6.9	Self-Employment.....	13-61
6.10	After Recalculation.....	13-63
6.11	Disagreement with the Recalculation.....	13-65
6.12	How the Recalculation Program Affects Family Lawyers.....	13-66
6.13	<i>Lavergne v Lavergne</i> .....	13-69
7	International Child Abduction.....	13-70
7.1	Application Procedure.....	13-71
7.2	Duty of the Contracting State .....	13-72
7.3	Legal Aspects .....	13-73
7.4	Resources.....	13-74
7.5	Practical Tips .....	13-75
7.6	Access.....	13-76
7.7	Conclusion .....	13-76
8	Appendix List.....	13-76

## CHAPTER 14

### TECHNOLOGY IN THE COURTROOM

1	Introduction.....	14-2
2	Attendance by Teleconference .....	14-2
3	Electronic Evidence .....	14-3
4	Electronic Filing of Court Documents .....	14-4
5	Alberta Courts Website.....	14-5