

IN THE SUPREME COURT OF CANADA

**IN THE MATTER OF SECTION 53 OF THE SUPREME COURT ACT, R.S.C., 1985,
C. S-26**

**IN THE MATTER OF A REFERENCE BY THE GOVERNOR IN COUNCIL
CONCERNING THE PROPOSAL FOR AN ACT RESPECTING CERTAIN ASPECTS
OF LEGAL CAPACITY FOR MARRIAGE FOR CIVIL PURPOSES, AS SET OUT IN
ORDER IN COUNCIL P.C. 2003-1055, DATED THE 16TH OF JULY 2003**

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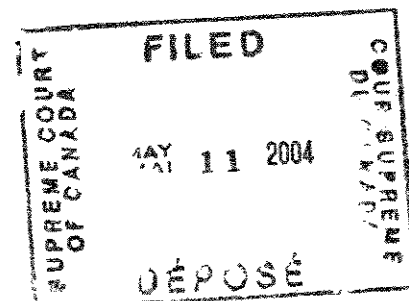
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PART I STATEMENT OF FACTS

A. *Overview*

1. Marriage is an important and fundamental civil right. While the issue of who may marry has been characterized by some as a moral or religious question, the Canadian Bar Association ("CBA") submits that in a society ruled by law, the question of marriage of same-sex couples must be determined by a contextual analysis of equality in accordance with the *Charter of Rights and Freedoms*.¹
2. The issues on this Reference pertain to the equality rights of a minority: gays and lesbians. Sexual orientation has been recognized as an analogous ground under the *Charter* because of the historical discrimination experienced by this minority.² The CBA is concerned about the treatment of a stigmatized minority and participates in the Reference, not as a moral or ethical exercise, but to contribute to a reasoned discussion about the legality of the proposed legislation.
3. The CBA endorses the positions on the four questions on this Reference taken by the Attorney General of Canada in his factum and supplementary factum. The CBA respectfully submits that nation-wide recognition of same-sex marriages as legal and binding is a long overdue constitutional imperative. The legal analyses of the Courts of Québec, Ontario and British Columbia that have recently considered this issue demonstrate that any other conclusion would construe the common law in a manner which violates the *Charter* and runs contrary to present day attitudes towards the institution of marriage.

¹ *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, Schedule B of the *Canada Act* 1982, (U.K.) 1982, c. 11 (the "*Charter*"), AGC Authorities, Vol. III, Tab 40.

² *Vriend v. Alberta*, [1998] 1 S.C.R. 493, AGC Supplementary Authorities, Tab 11.

B. *The CBA's Commitment to Equality*

4. The CBA was founded in 1896 and represents approximately 38,000 lawyers, jurists, academics and law students across Canada, with members and Branches in every province and territory.³
5. The CBA's interest in this Reference stems from the following:
 - (a) the CBA's mission includes the promotion of equality in the legal profession and in the justice system;
 - (b) one of the CBA's stated objectives is to assist in the elimination of discrimination in the law and in the administration of justice; and
 - (c) as the voice and advocate for the legal profession, the CBA is familiar with the practical impact of the issues involved in this Reference.⁴
6. Consistent with its mandate the CBA has, for many years, advocated the elimination of discrimination on the basis of sexual orientation. Specifically, the CBA has called upon federal, provincial and territorial governments to enact legislation to prohibit discrimination on the basis of sexual orientation.⁵
7. The CBA's goal of improving the law and the administration of justice includes, in the context of eliminating discrimination on the basis of sexual orientation, promoting the full legal status of same-sex couples.⁶

³ Affidavit of William Johnson, Q.C., sworn November 25, 2003 ("Affidavit of William Johnson") at para. 2.

⁴ *Ibid.* at para. 6.

⁵ *Ibid.* at paras. 7 to 10 and 12.

⁶ *Ibid.* at para. 13.

C. *Facts*

8. The CBA accepts the facts as stated by the Attorney General of Canada, in conjunction with the evidentiary records from the appellate decisions in *Halpern*⁷ and *EGALE*⁸ now before this Court pursuant to the Order of the Chief Justice dated February 19, 2004.

PART II POINTS IN ISSUE

9. The CBA adopts the statement of issues set out by the Attorney General of Canada in his factum and supplementary factum.

PART III STATEMENT OF ARGUMENT

Question 1: The proposed legislation is within the exclusive legislative authority of Parliament

10. The CBA agrees with the submissions of the Attorney General of Canada under Question 1, and adds the following.
11. First, the CBA stresses the importance of approaching the interpretation of Parliament's jurisdiction over marriage in a progressive manner which reflects the evolution of Canadian society and attitudes since Confederation. The Attorney General, in paragraphs 32 to 34 of his factum, cites a number of decisions of this Court that repeatedly confirm this approach towards the Constitution. Lord Sankey's statements in the "*Persons*" Reference respecting the rights of women aptly capture the proper constitutional approach to be taken in respect of the rights of gays and lesbians:

"...their Lordships do not think it right to apply rigidly to Canada of to-day the decisions and the reasonings therefor which commended themselves, probably rightly, to those who had to apply the law in different circumstances, in different centuries to countries in different stages of development."⁹

⁷ *Halpern v. Canada (Attorney General)* (2003), 65 O.R. (3rd) 161 (C.A.), AGC Authorities, Vol. I, Tab 12.

⁸ *EGALE Canada Inc. v. Canada (Attorney General)* (2003), 13 B.C.L.R. (4th) 1 (C.A.), AGC Authorities, Vol. I, Tab 8.

⁹ *Reference re: Meaning of the word "Persons" in Section 24 of the British North America Act*, [1930] A.C. 124, at pp. 134-135 (P.C.), CBA Authorities, Tab 8.

12. Attitudes towards homosexuality and homosexual couples have changed a great deal since Confederation, as the de-criminalization of homosexual sex between consenting adults in 1969, the extension of government benefits to same-sex common law couples and the equality jurisprudence of this Court all illustrate.
13. Second, there is judicial support for characterizing a provision allowing two people of the same sex to marry as a matter of capacity to marry, exclusively within the legislative competence of Parliament under s. 91(26) of the *Constitution Act*, 1867.¹⁰
14. Third, the CBA emphasizes the practical benefits of acknowledging Parliament's exclusive jurisdiction to confer the capacity to marry on same-sex couples. There is currently uncertain and inconsistent treatment of same-sex couples across the country, in respect of their ability to marry, their enjoyment of the benefits of marriage and their benefits and obligations on marital breakdown. Recognition of Parliament's jurisdiction over the capacity to marry, coupled with Parliament's exclusive jurisdiction over divorce, would imbue same-sex marriages with the consistency of national recognition and enforcement that is presently lacking.
15. As stated in paragraph 29 of the Attorney General of Canada's factum, "a driving force behind the allocation of the marriage power to Parliament was the desirability of a uniform law of marriage across the country. The idea was to avoid a patchwork situation with its concomitant problems of recognition and enforcement of marriages." The CBA states this purpose of s. 91(26) of the *Constitution Act*, 1867 remains a vital objective today and is needed to promote legal certainty over the recognition and enforcement of same-sex marriages.
16. The current patchwork of rights, benefits and obligations of same-sex couples in Canada is also an important feature of the inequality between opposite-sex and same-sex couples which engages s. 15(1) of the *Charter*. The CBA's submissions in this regard are set out below under Question 4.

¹⁰ *Re North et al. and Matheson* (1974), 52 D.L.R. (3d) 280 (Man. Co. Ct.) at 282, CBA Authorities, Tab 7.

Question 2: Clause 1 of the proposed legislation is consistent with the Charter

17. The CBA agrees with the Attorney General of Canada's submissions that Clause 1, which extends the capacity to marry to persons of the same-sex, is consistent with the *Charter*. The CBA states that the current, opposite-sex definition of marriage is discriminatory and contrary to s. 15(1) of the *Charter*. The CBA's submissions respecting the applicability of the equality provisions of the *Charter* are set out below under Question 4. It is the CBA's position that full legal recognition of marriage for gays and lesbians is the only constitutionally sound position.¹¹
18. The CBA supports the Attorney General of Canada's submissions that the proposed legislation does not violate the freedom of religion guarantee in s. 2(a) of the *Charter*. The CBA acknowledges that, if this legislation is enacted, some clergy may refuse to administer marriage vows to same-sex couples. To the extent this may be regarded as discriminatory, the CBA accepts it as constitutionally permissible in light of s. 2(a) of the *Charter*.
19. The CBA also submits that the proposed legislation does not infringe upon the religious freedom of those who believe homosexuality is a sin and that same-sex couples should not be recognized. The definition of marriage to be the "lawful union of two persons to the exclusion of all others" includes both opposite-sex and same-sex couples. People whose religious faith does not include acceptance of the latter can still marry. Their constitutional rights are not impacted by the fact that same-sex couples can also avail themselves of the right to marry.
20. This Court has, most recently in *Trinity Western University v. British Columbia College of Teachers*, stressed that neither freedom of religion nor the guarantee against discrimination based on sexual orientation are absolute, and that both can and must co-exist in Canadian society. One does not trump the other. The line between the two is found in the difference between belief and conduct.¹² While some citizens may hold a

¹¹ Affidavit of William Johnson, Exhibit "I".

¹² [2001] 1 S.C.R. 772 at paras. 28 to 37, AGC Authorities, Vol. II, Tab 30.

religious belief that homosexuality is improper, that does not permit them to engage in discriminatory conduct contrary to the right to protection against discrimination, nor to impose their views on others.

Question 3: Paragraph 2(a) of the Charter protects religious officials from being compelled to perform a marriage between two persons of the same-sex

21. The CBA agrees with the Attorney General of Canada's submissions on Question 3.

Question 4: The opposite-sex requirement for marriage infringes s. 15(1) of the Charter

22. Equal access to marriage for gays and lesbians is a matter of equality under the *Charter* and is consistent with previous decisions of this Court and certain legislative enactments by Parliament and some Legislatures respecting the civil rights of gays and lesbians. The CBA submits that full legal sanction of marriage for same-sex couples would mark the logical extension of these previous decisions and enactments, and help bring to a conclusion the years of equality litigation that has been necessary to bring about legal reform for gays and lesbians.
23. The opposite-sex requirement for marriage at common law is, the CBA submits, based upon antiquated law from over a century ago that did not address the issue of equal marriage for gays and lesbians. The oft-cited 1866 English decision in *Hyde v. Hyde*¹³ considered the question of whether a couple married polygamously could divorce. The specific issue was whether, for the purpose of construing the word "wife" in the *Divorce Act, 1857*, the status of a woman married polygamously resembles that of the Christian "wife". The Court held that it did not because "in Christendom" – as opposed to colonies in which polygamous marriages were considered to be valid – marriage is the "union of two people who promise to go through life together" which was then restated using gendered terms corresponding with those used in the statute "one man and one woman for life". The case was governed by principles of Christian ecclesiastical law and did not revolve around the nature of marriage as requiring the two parties to be man and woman.

¹³ *Hyde v. Hyde* (1866), [1861-1873] All E.R. Rep. 175, AGC Supplementary Authorities, Tab 3.

24. In any event, and whatever its origin, the CBA submits the common law must change and grow to respect *Charter* values and the evolving attitudes of society. This Court has previously held that there is no doubt that the *Charter* applies to common law. As McIntyre J. stated in *Dolphin Delivery*:

“To adopt a construction of s. 52(1) which would exclude from Charter application the whole body of the common law which in great part governs the rights and obligations of the individuals in society, would be wholly unrealistic and contrary to the clear language employed in s. 52(1) of the Act.”¹⁴

25. Under this question, the CBA analyzes the antiquated opposite-sex requirement of marriage in the context of s. 15 of the *Charter* with attention to the manner in which same-sex couples and their children are treated differently than opposite-sex couples and their children.

A. Section 15 of the Charter

The purpose of s. 15

26. In *Law*, this Court explained the purpose of s. 15 as follows:

It may be said that the purpose of s. 15(1) is to prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration. Legislation which effects differential treatment between individuals or groups will violate this fundamental purpose where those who are subject to differential treatment fall within one or more enumerated or analogous grounds, and where the differential treatment reflects the stereotypical application of presumed group or personal characteristics, or otherwise has the effect of perpetuating or promoting the view that the individual is less capable, or less worthy of recognition or value as a human being or as a member of

¹⁴ *Retail, Wholesale and Delivery Store Union, Local 580 [R.W.D.S.U.] v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573 at para. 25, CBA Authorities, Tab 9. See also *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at para. 73, CBA Authorities, Tab 1.

Canadian society. Alternatively, differential treatment will not likely constitute discrimination within the purpose of s. 15(1) where it does not violate the human dignity or freedom of a person or group in this way, and in particular where the differential treatment also assists in ameliorating the position of the disadvantaged within Canadian society.¹⁵

27. The key elements of s. 15(1) are thus protection of human dignity and freedom and the prevention of differential treatment on listed or analogous grounds that reflects social stereotyping or entrenches social disadvantage.

The three-step *Law* analysis

28. As stated in *Law*, in determining whether there has been a violation of s. 15, the three central inquiries are whether the impugned legislation provides for: (a) differential treatment, (b) upon an enumerated or an analogous ground and (c) which is discriminatory in a substantive sense, involving factors such as prejudice, stereotyping and disadvantage.¹⁶ These inquiries must be made while keeping in mind the purpose of s. 15(1) of the *Charter* and "taking into account the full social, political, and legal context of the claim."¹⁷ The CBA submits the common law opposite-sex requirement for marriage breaches s. 15 under the *Law* test in all respects.
29. First, there can be no question that being unable to marry gives rise to differential treatment between opposite-sex and same-sex couples. As stated in *Halpern*¹⁸ and noted by the Attorney General of Canada in paragraph 15 of his supplementary factum, while many benefits and obligations have been extended to common law couples, most of those benefits and obligations are not available to common law couples until they have lived together for a minimum period. The same benefits and obligations (and often others) are available to married couples immediately, and some are only available to married couples. Same-sex couples who cannot marry (those outside Ontario, British Columbia

¹⁵ *Law v. Canada (Minster of Employment and Immigration)*, [1999] 1 S.C.R. 497 at para. 51, AGC Supplementary Authorities, Tab 5.

¹⁶ *Law* at paras. 30 and 88. See CBA Authorities, Tab 3, for para. 30.

¹⁷ *Law* at para. 30.

¹⁸ *Halpern* at paras. 104 and 105.

and Québec) cannot overcome this distinction. More is said on this subject below in paragraphs 47 to 54.

30. The inability of same-sex couples to choose to marry and assume all the attendant benefits and obligations of marriage is at the heart of their differential treatment. In *Walsh* this Court stated “[t]he decision to marry or not is intensely personal and engages a complex interplay of social, political, religious, and financial considerations by the individual.”¹⁹ The majority in *Walsh* concluded:

Limitations imposed by this Court that serve to restrict this freedom of choice among persons in conjugal relationships would be contrary to our notions of liberty.²⁰

31. Leaving aside the issue of whether a claimant’s exercise of personal choice should be considered a constitutionally permissible basis for differential treatment based on enumerated or analogous grounds, the state’s withholding of choice on the intensely personal decision of whether to marry is unquestionably a violation of *Charter* rights.
32. Second, it is settled law that the basis upon which the common law differentiates between opposite-sex and same-sex couples, sexual orientation, is an analogous ground.²¹
33. Third, Section 15 is designed to “...ensure equality in the formulation and application of the law...” and “...to remedy or prevent discrimination against groups subject to stereotyping, historical disadvantage and political and social prejudice in Canadian society...”²²
34. The common law definition of marriage, which excludes same-sex couples, promotes the view that same-sex couples are less capable and worthy of recognition as human beings and members of Canadian society than are opposite-sex couples. This Court has

¹⁹ *Nova Scotia (Attorney General) v. Walsh*, [2002] 4 S.C.R. 325, AGC Supplementary Authorities, Tab 8 at para. 43.

²⁰ *Walsh* at para. 63. See CBA Authorities, Tab 5, for paras. 62 and 63.

²¹ *Egan v. Nesbit*, [1995] 2 S.C.R. 513, AGC Supplementary Authorities, Tab 1; *Vriend v. Alberta*.

²² *Law Society of British Columbia v. Andrews*, [1989] 1 S.C.R.143 at para. 34, CBA Authorities, Tab 4; *R. v. Swain*, [1991] 1 S.C.R. 933 at para. 80, CBA Authorities, Tab 6.

previously acknowledged the existence of societal discrimination against gays and lesbians in *Egan* and *Vriend*. The exclusion of same-sex couples from marriage signals that same-sex unions do not deserve the same interest, the same respect and the same consideration as opposite-sex unions, perpetuates the underprivileged status of gays and lesbians, and touches their sense of dignity at its core.

35. As such, the common law definition of marriage is antithetical to the equality guarantee in s. 15. Clause 1 of the proposed legislation remedies the differential treatment of same-sex couples and therefore satisfies s. 15.
36. The primary basis for justifying the opposite-sex requirement of marriage – procreation and raising of children – is derived from ecclesiastical law which has no place in Canadian law governed by the *Charter*. Moreover, that justification ignores the reality of gay and lesbian families and overlooks the fact that opposite-sex couples are permitted to marry irrespective of their capacity or decision to raise children. Indeed, some opposite-sex couples use the same reproductive technologies and adoption procedures employed by same-sex couples to bring children into their families.

Human Dignity

37. This Court's recent equality jurisprudence recognizes the promotion of human dignity as key in fulfilling the mandate of s. 15(1) of the *Charter*.²³
38. Protecting and promoting human dignity is an "overriding concern" of the s. 15 guarantee and infuses all elements of the discrimination analysis.²⁴
39. This Court commented on the concept of human dignity in *Law*:

Human dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. Human dignity is harmed by unfair

²³ *Law* at para. 51; *Lavoie v. Canada*, [2002] 1 S.C.R. 769 at paras. 38, 40 and 47, CBA Authorities, Tab 2.

²⁴ *Law* at para. 54.

treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits. It is enhanced by laws which are sensitive to the needs, capacities, and merits of different individuals, taking into account the context underlying their differences. Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within Canadian society. Human dignity within the meaning of the equality guarantee does not relate to the status or position of an individual in society *per se*, but rather concerns the manner in which a person legitimately feels when confronted with a particular law. Does the law treat him or her unfairly, taking into account all of the circumstances regarding the individuals affected and excluded by the law?²⁵

40. Contrary to the concept of human dignity as described by this Court, the common law definition of marriage, which excludes same-sex couples, fails to recognize gay and lesbian Canadians' full place within our society.

Freedom

41. "Freedom" or "liberty" is "basically defined as the absence of coercion and the ability to make fundamental choices with regard to one's life".²⁶ This Court has also recognized the choice to marry as a "fundamental freedom" engaging the principle of equality.²⁷
42. The CBA does not propose a full s. 7 *Charter* analysis of this issue, but observes that the withholding of the choice to marry for same-sex couples is contrary to our notions of liberty and restricts freedom of choice among same-sex couples.

B. Section 1 of the Charter

43. The CBA agrees with the Attorney General of Canada's submission that the infringement of s. 15 cannot be justified under s. 1, following the *Oakes* test.²⁸ There is simply no

²⁵ *Law* at para. 53.

²⁶ *Walsh* at para. 63.

²⁷ *Walsh* at para. 62.

²⁸ *R. v. Oakes*, [1986] 1 S.C.R. 103 at 139-140, AGC Supplementary Authorities, Tab 10.

pressing and substantial objective for excluding same-sex couples from the institution of marriage.

C. *The family law inequities between opposite-sex and same-sex couples*

44. As stated above, the CBA regards the withholding of choice on the decision whether to marry as the key violation of *Charter* rights in the existing common law definition of marriage. One aspect of this is the inability of same-sex couples to choose between the marital and common law legal regimes which govern relationships in Canada today.
45. Another dimension of this problem is the uncertainty faced by same-sex couples lawfully married in Québec, Ontario or British Columbia who move to provinces or territories which do not recognize their marriages as legally valid. When they do, not only are their benefits and obligations as a married couple lost or altered, but their rights and obligations upon marital breakdown, including the application of the *Divorce Act*²⁹, will vary depending upon the jurisdiction in which they reside.
46. This situation effectively diminishes the freedom of mobility of same-sex couples within Canada. A same-sex couple lawfully wed in British Columbia, for example, may feel precluded from relocating to another province in which their marriage is not recognized, due to the uncertainty over their rights and obligations as spouses in the event their marriage breaks down or one of them dies while resident in that province. A same-sex couple may feel compelled to refuse job opportunities or otherwise avoid moving because they do not wish to endanger, or do not know if they would be endangering, the benefits they have achieved by virtue of marriage.
47. In this section the CBA further illustrates the differences between couples who have the freedom to marry and those who do not.
48. The legislative framework for same-sex couples in the Province of Alberta is used as an example because its Legislature has publicly stated its opposition to same-sex marriage

²⁹ *Divorce Act*, R.S., 1985, c. 3 (2nd supp.), Tab 1.

though the use of the “notwithstanding” clause in the *Charter* to expressly exclude same-sex couples from the Province’s *Marriage Act*.³⁰

49. Alberta has enacted the *Adult Interdependent Relationships Act* (“AIRA”) respecting “adult interdependent partners” (“AIPs”), which provides benefits and obligations for relationships outside marriage.³¹ Under this legislation a relationship of interdependence does not arise until there has been three years of continuous cohabitation (unless a written AIP agreement has been made).³²

Child Support

50. The differing benefits and obligations of a married couple (opposite-sex) and an unmarried couple (either same-sex, who cannot marry, or opposite-sex who choose not to marry) are manifest upon marital breakdown. While provincial legislation does provide for spousal and child support, the provisions are not the same as those available under the *Divorce Act*³³ to married couples.
51. For instance, in Alberta child support for a divorcing couple is set in accordance with the Federal Support Child Guidelines. Support for children of an unmarried couple differs in the following respects:
- (a) Alberta has not adopted the Federal Support Child Guidelines for proceedings under provincial legislation, nor has it yet enacted provincial child support guidelines.
 - (b) The age qualifications for entitlement to support for children of unmarried couples are less favourable than those of married couples.³⁴

³⁰ *Marriage Act*, R.S.A. 2000, c. M-5, ss. 1 and 2, Tab 6.

³¹ *Adult Interdependent Relationships Act*, S.A. 2002, c. A-4.5, Tab 2.

³² *AIRA*, s. 3.

³³ *Divorce Act*, s. 15.1.

³⁴ *Divorce Act*, s. 2(1); *Domestic Relations Act*, R.S.A. 2000, c. D-14, s. 28(a), Tab 3.

- (c) While under Alberta's new *Family Law Act* child support may be sought from an AIP or former AIP of the mother or father of the child, unless the AIP has adopted the child or the parties have entered into an adult interdependent partner agreement in conformity with the *AIRA*, a period of three years' cohabitation is a prerequisite to liability for support.³⁵

Spousal Support

52. While spousal support is available in Alberta to AIPs under the *Domestic Relations Act*,³⁶ no support can be ordered unless the parties have cohabited for three years or entered into an AIP agreement. Further, no interim relief can be obtained if the applicant has sufficient other means of support "from any source whatsoever".³⁷

Division of Property

53. AIPs are not entitled to apply under the *Matrimonial Property Act* (Alberta) to divide property on the breakdown of their relationship in the way that married spouses can.³⁸ Only "spouses" or former "spouses" can do so. In other words, only opposite-sex married couples can rely on this legislation.
54. As a result AIPs, unlike opposite-sex, married couples, must rely on equitable claims of resulting or constructive trusts to establish their interests in property acquired or enhanced during the relationship, in which there is no statutory presumption of equal sharing. Moreover, there is no ready ability to preserve assets pending the determination of such issues. Further, as a consequence of the statutory requirements of the *Employment Pension Plans Act* (Alberta), AIPs cannot share pension benefits upon breakdown of their relationship.³⁹

³⁵ *Family Law Act*, S.A. 2003, c.F-4.5 (passed but not yet proclaimed in force), ss. 1, 47 and 48(1), Tab 5.

³⁶ *Domestic Relations Act*, s. 17.1.

³⁷ *Domestic Relations Act*, s. 16(2); *Divorce Act*, s. 15.2(2).

³⁸ *Matrimonial Property Act*, R.S.A. 2000, c. M-8, ss. 1 and 3, Tab 7.

³⁹ R.S.A. 2000, c. E-8, s. 61, Tab 4.

PART IV REMEDY SOUGHT

55. The questions on this Reference should be answered as follows:

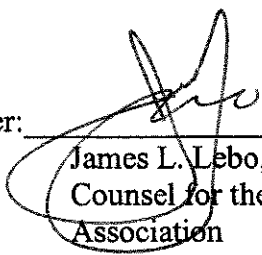
- (a) Question 1: Yes
- (b) Question 2: Yes
- (c) Question 3: Yes
- (d) Question 4: No, because it is inconsistent with s. 15(1) and cannot be justified under s. 1 of the *Charter of Rights and Freedoms*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Calgary, Alberta, this 10th day of May, 2004.

McLENNAN ROSS LLP

Per: _____


James L. Lebo, Q.C.
Counsel for the Canadian Bar
Association

PART V TABLE OF AUTHORITIES

	Cited at Paragraphs
Cases:	
<i>Dagenais v. Canadian Broadcasting Corp.</i> , [1994] 3 S.C.R. 835, CBA Authorities, Tab 1.	24
<i>EGALE Canada Inc. v. Canada (Attorney General)</i> (2003), 13 B.C.L.R. (4 th) 1 (C.A.); AGC Authorities, Vol. I, Tab 8.	8
<i>Egan v. Nesbit</i> , [1995] 2 S.C.R. 513; AGC Supplementary Authorities, Tab 1.	32, 34
<i>Halpern v. Canada (Attorney General)</i> , (2003), 65 O.R. (3 rd) 161 (C.A.); AGC Authorities, Vol. I, Tab 12.	8, 29
<i>Hyde v. Hyde</i> (1866), [1861-1873] All E.R. Rep. 175; AGC Supplementary Authorities, Tab 3.	23
<i>Lavoie v. Canada</i> , [2002] 1 S.C.R. 769; CBA Authorities, Tab 2.	37
<i>Law v. Canada (Minster of Employment and Immigration)</i> , [1999] 1 S.C.R. 497; AGC Supplementary Authorities, Tab 5, and CBA Authorities, Tab 3.	26, 28, 37, 39
<i>Law Society of British Columbia v. Andrews</i> , [1989] 1 S.C.R.143, CBA Authorities, Tab 4.	33
<i>Nova Scotia (Attorney General) v. Walsh</i> , [2002] 4 S.C.R. 325; AGC Supplementary Authorities, Tab 8, and CBA Authorities, Tab 5.	30, 41
<i>R. v. Oakes</i> , [1986] 1 S.C.R. 103; AGC Supplementary Authorities, Tab 10.	43
<i>R. v. Swain</i> , [1991] 1 S.C.R. 933, CBA Authorities, Tab 6.	33
<i>Re North et al. and Matheson</i> (1974), 52 D.L.R. (3d) 280 (Man. Co. Ct.); CBA Authorities, CBA Authorities, Tab 7.	13
<i>Reference re: Meaning of the word "Persons" in Section 24 of the British North America Act</i> , [1930] A.C. 124 (P.C.); CBA Authorities, Tab 8.	11
<i>Retail, Wholesale and Delivery Store Union, Local 580 [R.W.D.S.U.] v. Dolphin Delivery Ltd.</i> , [1986] 2 S.C.R. 573; CBA Authorities, Tab 9.	24
<i>Trinity Western University v. British Columbia College of Teachers</i> [2001] 1. S.C.R. 772; AGC Authorities, Vol. II, Tab 30.	20

Vriend v. Alberta, [1998] 1 S.C.R. 493; AGC Supplementary Authorities, Tab 11. 2, 32, 34

PART VI STATUTES RELIED ON

Tab

AGC Authorities, *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*,
Vol. III, Tab 40. 1982, Schedule B of the *Canada Act* 1982, (U.K.) 1982, c. 11.

Federal Legislation

1. *Divorce Act*, R.S., 1985, c. 3 (2nd supp.).

Provincial Legislation

2. *Adult Interdependent Relationships Act*, S.A. 2002, c. A-4.5
3. *Domestic Relations Act*, R.S.A. 2000, c. D-14.
4. *Employment Pension Plans Act*, R.S.A. 2000, c. E-8.
5. *Family Law Act*, S.A. 2003, c.F-4.5
(passed but not yet proclaimed in force).
6. *Marriage Act*, R.S.A. 2000, c. M-5.
7. *Matrimonial Property Act*, R.S.A. 2000, c. M-8.

TAB 1

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CURRENT TO APRIL 29, 2004

Divorce Act

R.S.C. 1985, c. 3 (2nd Supp.)

[Unofficial Chapter No. D-3.4]

1986, c. 4, assented to: 13th February, 1986

An Act respecting divorce and corollary relief

SHORT TITLE

Short title

1. This Act may be cited as the Divorce Act.

R.S.C. 1985, c. 3 (2nd Supp.), s. 1.

INTERPRETATION

Definitions

2. (1) In this Act,

"age of majority"

"age of majority", in respect of a child, means the age of majority as determined by the laws of the province where the child ordinarily resides, or, if the child ordinarily resides outside of Canada, eighteen years of age;

"appellate court"

"appellate court", in respect of an appeal from a court, means the court exercising appellate jurisdiction with respect to that appeal;

"applicable guidelines"

"applicable guidelines" means

- (a) where both spouses or former spouses are ordinarily resident in the same province at the time an application for a child support order or a variation order in respect of

a child support order is made, or the amount of a child support order is to be recalculated pursuant to section 25.1, and that province has been designated by an order made under subsection (5), the laws of the province specified in the order, and

(b) in any other case, the Federal Child Support Guidelines;

"child of the marriage"

"child of the marriage" means a child of two spouses or former spouses who, at the material time,

- (a) is under the age of majority and who has not withdrawn from their charge, or
- (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life;

"child support order"

"child support order" means an order made under subsection 15.1(1);

"corollary relief proceeding"

"corollary relief proceeding" means a proceeding in a court in which either or both former spouses seek a child support order, a spousal support order or a custody order;

"court"

"court", in respect of a province, means

- (a) for the Province of Ontario, the Superior Court of Justice,
- (a.1) for the Province of Prince Edward Island or Newfoundland, the trial division of the Supreme Court of the Province,
- (b) for the Province of Quebec, the Superior Court,
- (c) for the Provinces of Nova Scotia and British Columbia, the Supreme Court of the Province,
- (d) for the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, the Court of Queen's Bench for the Province, and
- (e) for Yukon or the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice,

and includes such other court in the province the judges of which are appointed by the Governor General as is designated by the Lieutenant Governor in Council of the province as a court for the purposes of this Act;

"custody"

"custody" includes care, upbringing and any other incident of custody;

"custody order"

"custody order" means an order made under subsection 16(1);

"divorce proceeding"

"divorce proceeding" means a proceeding in a court in which either or both spouses seek a divorce alone or together with a child support order, a spousal support order or a custody order;

"Federal Child Support Guidelines"

"Federal Child Support Guidelines" means the guidelines made under section 26.1;

"provincial child support service"

"provincial child support service" means any service, agency or body designated in an agreement with a province under subsection 25.1(1);

"spousal support order"

"spousal support order" means an order made under subsection 15.2(1);

(4) Section 2 of the Act is amended by adding the following after subsection (4):

"spouse"

"spouse" means either of a man or woman who are married to each other;

"support order"

"support order" means a child support order or a spousal support order;

"variation order"

"variation order" means an order made under subsection 17(1);

"variation proceeding"

"variation proceeding" means a proceeding in a court in which either or both former spouses seek a variation order.

Child of the marriage

(2) For the purposes of the definition "child of the marriage" in subsection (1), a child of two spouses or former spouses includes

15. In sections 15.1 to 16, "spouse" has the meaning assigned by subsection 2(1), and includes a former spouse.

**** Quicklaw Table ****

For changes prior to Quicklaw Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
15	1997 c1 s2	1997 May 1	SI/97-43

R.S.C. 1985, c. 3 (2nd Supp.), s. 15; S.C. 1997, c. 1, s. 2

Child Support Orders

Child support order

15.1 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to pay for the support of any or all children of the marriage.

Interim order

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses, make an interim order requiring a spouse to pay for the support of any or all children of the marriage, pending the determination of the application under subsection (1).

Guidelines apply

(3) A court making an order under subsection (1) or an interim order under subsection (2) shall do so in accordance with the applicable guidelines.

Terms and conditions

(4) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order or interim order as it thinks fit and just.

Court may take agreement, etc., into account

(5) Notwithstanding subsection (3), a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines if the court is satisfied

- (a) that special provisions in an order, a judgment or a written agreement respecting the financial obligations of the spouses, or the division or transfer of their property,

directly or indirectly benefit a child, or that special provisions have otherwise been made for the benefit of a child; and

- (b) that the application of the applicable guidelines would result in an amount of child support that is inequitable given those special provisions.

Reasons

(6) Where the court awards, pursuant to subsection (5), an amount that is different from the amount that would be determined in accordance with the applicable guidelines, the court shall record its reasons for having done so.

Consent orders

(7) Notwithstanding subsection (3), a court may award an amount that is different from the amount that would be determined in accordance with the applicable guidelines on the consent of both spouses if it is satisfied that reasonable arrangements have been made for the support of the child to whom the order relates.

Reasonable arrangements

(8) For the purposes of subsection (7), in determining whether reasonable arrangements have been made for the support of a child, the court shall have regard to the applicable guidelines. However, the court shall not consider the arrangements to be unreasonable solely because the amount of support agreed to is not the same as the amount that would otherwise have been determined in accordance with the applicable guidelines.

**** Quicklaw Table ****

Provision	Changed by	In force	Authority
15.1	1997 c1 s2	1997 May 1	SI/97-43

S.C. 1997, c. 1, s. 2.

Spousal Support Orders

Spousal support order

15.2 (1) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse.

Interim order

- (2) Where an application is made under subsection (1), the court may, on application by either or

both spouses, make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of the other spouse, pending the determination of the application under subsection (1).

Terms and conditions

(3) The court may make an order under subsection (1) or an interim order under subsection (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.

Factors

(4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by each spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of either spouse.

Spousal misconduct

(5) In making an order under subsection (1) or an interim order under subsection (2), the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

Objectives of spousal support order

(6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

**** Quicklaw Table ****

Provision	Changed by	In force	Authority
15.2	1997 c1 s2	1997 May 1	SI/97-43

TAB 2

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Current to Alberta Gazette April 30, 2004

SA 2002, c. A-4.5

ADULT INTERDEPENDENT RELATIONSHIPS ACT

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Preamble

WHEREAS marriage is an institution that has traditional religious, social and cultural meaning for many Albertans; and

WHEREAS it is recognized in Alberta as a fundamental principle that marriage is a union between a man and a woman to the exclusion of all others; and

WHEREAS the Legislature of Alberta affirms that a spouse is a person who is married; and

WHEREAS there are Albertans in interdependent relationships outside marriage; and

WHEREAS it is appropriate to define a legal context for the nature of those interdependent relationships and to set out the applicability of Alberta laws to them;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

- (a) "adult interdependent partner" means an adult interdependent partner within the meaning of section 3, but does not include a former adult interdependent partner;
- (b) "adult interdependent partner agreement" means an agreement referred to in section 7;
- (c) "adult interdependent relationship" means the relationship between 2 persons who are adult interdependent partners of each other;
- (d) "former adult interdependent partner" means a former adult interdependent partner within the meaning of section 10;
- (e) "Minister" means the Minister determined under section 16 of the Government Organization Act as the Minister responsible for this Act;
- (f) "relationship of interdependence" means a relationship outside marriage in which any 2 persons
 - (i) share one another's lives,
 - (ii) are emotionally committed to one another, and
 - (iii) function as an economic and domestic unit;
- (g) "spouse" means the husband or wife of a married person.

(2) In determining whether 2 persons function as an economic and domestic unit for the purposes of subsection (1) (f)(iii), all the circumstances of the relationship must be taken into account, including such of the following matters as may be relevant:

- (a) whether or not the persons have a conjugal relationship;
- (b) the degree of exclusivity of the relationship;
- (c) the conduct and habits of the persons in respect of household activities and living arrangements;
- (d) the degree to which the persons hold themselves out to others as an economic and domestic unit;
- (e) the degree to which the persons formalize their legal obligations, intentions and responsibilities toward one another;
- (f) the extent to which direct and indirect contributions have been made by either person to the other or to their mutual well-being;
- (g) the degree of financial dependence or interdependence and any arrangements for financial support between the persons;
- (h) the care and support of children;

- (i) the ownership, use and acquisition of property.

History: SA 2002 cA-5.6 s1 effective June 1, 2003 (O.C. 202/ 2003)

Application of Act

2 This Act applies to adult interdependent relationships arising before or after this Act comes into force.

History: SA 2002 cA-5.6 s2 effective June 1, 2003 (O.C. 202/ 2003)

Adult interdependent partner

3(1) Subject to subsection (2), a person is the adult interdependent partner of another person if

- (a) the person has lived with the other person in a relationship of interdependence

- (i) for a continuous period of not less than 3 years, or
 - (ii) of some permanence, if there is a child of the relationship by birth or adoption,

or

- (b) the person has entered into an adult interdependent partner agreement with the other person under section 7.

(2) Persons who are related to each other by blood or adoption may only become adult interdependent partners of each other by entering into an adult interdependent partner agreement under section 7.

History: SA 2002 cA-5.6 s3 effective June 1, 2003 (O.C. 202/ 2003)

Relationship of interdependence

4(1) A relationship of interdependence may exist between 2 persons who are related to each other by blood or adoption except where one of the persons is a minor.

(2) A relationship of interdependence does not exist between 2 persons where one of the persons provides the other with domestic support and personal care for a fee or other consideration or on behalf of another person or organization, including a government.

History: SA 2002 cA-5.6 s4 effective June 1, 2003 (O.C. 202/ 2003)

Restrictions

5(1) A person cannot at any one time have more than one adult interdependent partner.

(2) A married person cannot become an adult interdependent partner while living with his or her spouse.

History: SA 2002 cA-5.6 s5 effective June 1, 2003 (O.C. 202/ 2003)

Minors

6 Subject to sections 4(1) and 7(2), a minor may be an adult interdependent partner.

History: SA 2002 cA-5.6 s6 effective June 1, 2003 (O.C. 202/ 2003)

Adult interdependent partner agreement

7(1) Subject to subsection (2), any 2 persons who are living together or intend to live together in a relationship of interdependence may enter into an adult interdependent partner agreement in the form provided for by the regulations.

(2) A person may not enter into an adult interdependent partner agreement if the person

- (a) is a party to an existing adult interdependent partner agreement,
- (b) is married, or
- (c) is a minor, unless

(i) the minor is at least 16 years of age, and

(ii) the minor's guardians have given their prior written consent.

History: SA 2002 cA-5.6 s7 effective June 1, 2003 (O.C. 202/ 2003)

Validity of adult interdependent partner agreement

8(1) An adult interdependent partner agreement is invalid if

- (a) one of the parties was induced by fraud, duress or undue influence to enter into the agreement,
- (b) one of the parties lacked the mental capacity to understand the nature of the agreement,
- (c) the parties were neither living together nor intending to live together in a relationship of interdependence when the agreement was entered into, or
- (d) one of the parties was prohibited by section 7(2) from entering into the agreement.

(2) A person who

- (a) purports to enter into an adult interdependent partner agreement in circumstances in which the person is prohibited from doing so by section 7(2), or
- (b) induces another person to enter into an adult interdependent partner agreement with the person in circumstances referred to in subsection (1)(a),

is liable in damages to compensate the other party to the adult interdependent partner agreement for pecuniary and non-pecuniary loss and costs incurred as a consequence of the invalid adult interdependent partner agreement.

(3) A person who uses an adult interdependent partner agreement to claim an adult interdependent relationship with another person knowing that the agreement is invalid is liable in damages to compensate a person who is not a party to the adult interdependent partner agreement for pecuniary loss and costs incurred in reliance on the invalid adult interdependent partner agreement.

History: SA 2002 cA-5.6 s8 effective June 1, 2003 (O.C. 202/ 2003)

False allegation

9 A person who alleges an adult interdependent relationship knowing that the relationship does not exist is liable in damages to compensate any person for pecuniary loss and costs incurred in reliance on the existence of the alleged adult interdependent relationship.

History: SA 2002 cA-5.6 s9 effective June 1, 2003 (O.C. 202/ 2003)

Former adult interdependent partner

10(1) Unless another enactment provides otherwise, an adult interdependent partner becomes the former adult interdependent partner of another person when the earliest of the following occurs:

- (a) the adult interdependent partners enter into a written agreement that provides evidence that the adult interdependent partners intend to live separate and apart without the possibility of reconciliation;
- (b) the adult interdependent partners live separate and apart for more than one year and one or both of the adult interdependent partners intend that the adult interdependent relationship not continue;
- (c) the adult interdependent partners marry each other or one of the adult interdependent partners marries a third party;
- (d) in the case of an adult interdependent partner referred to in section 3(1)(a), the adult interdependent partner enters into an adult interdependent partner agreement with a third party.

(2) For the purposes of subsection (1)(b), a period of living separate and apart is not considered interrupted or terminated

- (a) by reason only that either adult interdependent partner has become incapable of forming the intention to live separate and apart, or
- (b) by reason only that the adult interdependent partners have resumed living together during a single period of not more than 90 days with reconciliation as its primary purpose.

(3) An adult interdependent partner agreement expires when the parties become former adult interdependent partners under subsection (1).

History: SA 2002 cA-5.6 s10 effective June 1, 2003 (O.C. 202/ 2003)

Onus of proof

11 A person who alleges in a court proceeding that the person is in or was in an adult interdependent relationship has the onus of proving the existence of the relationship.

History: SA 2002 cA-5.6 s11 effective June 1, 2003 (O.C. 202/ 2003)

Partnership Act does not apply

12 The Partnership Act does not apply to an adult interdependent relationship.

History: SA 2002 cA-5.6 s12 effective June 1, 2003 (O.C. 202/ 2003)

Regulations

13 The Minister may make regulations

- (a) respecting the form, contents and execution of an adult interdependent partner agreement and other forms to be used under this Act;
- (b) respecting any other matter or thing that the Minister considers necessary to carry out the intent of this Act.

History: SA 2002 cA-5.6 s13 effective June 1, 2003 (O.C. 202/ 2003)

Consequential Amendments

14 to 82 [Sections 14 to 82 contained Consequential Amendments to various Acts. The text of those amendments has been or will be incorporated into the relevant sections of those Acts.]

TAB 3

[Open in new window](#)

Current to Alberta Gazette April 30, 2004

RSA 2000, c. D-14

DOMESTIC RELATIONS ACT

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "adult interdependent partner" includes a former adult interdependent partner;
- (b) "Court" means the Court of Queen's Bench.

History: RSA 1980 cD-37 s14

Part 3
Alimony, Maintenance and Support

note:
Quicklaw ng to Part 3 was amended by SA 2002 cA-4.5 s31(4)
The headitive June 1, 2003 (O.C. 202/2003).)
effec

Alimony

Court has jurisdiction to grant alimony to either spouse in an action limited to that object
15 These where the plaintiff would be entitled to a judgment of judicial separation or a judgment for
only in a caf conjugal rights.
restitution c

History: RSA 1980 cD-37 s15

Interim order for alimony

16 (1) When an application is made in an action for

- (a) alimony,
- (b) dissolution of marriage, or
- (c) a declaration of nullity, judicial separation or restitution of conjugal rights,

an interim order for the payment of alimony to the plaintiff pendente lite may be made, and in the event of an appeal the alimony may be continued by a further interim order until the determination of the appeal.

- (2) No interim order shall be made if the plaintiff has from any source whatsoever sufficient means of support independent of the defendant.
- (3) The interim order may direct the payment of periodical sums of money, and the amount of the alimony directed is in the discretion of the Court.
- (4) When an application is made in an action referred to in subsection (1), the Court may order from time to time the payment by the defendant of any sums the Court considers reasonable and proper on account of the necessary disbursements of the plaintiff of and incidental to the action, at the time, in the manner and to the persons the Court considers proper.

RSA 1980 cD-37 s16

**** Quicklaw Table ****

Provision	Changed by	In force	Authority
17	SA 2002 cA-4.5 s31	2003 Jun 1	O.C. 202/2003

History: RSA 2000 cD-14 s17; SA 2002 cA-4.5 s31

Support order - adult interdependent partner

17.1(1) The Court may make a support order on application by either or both of the adult interdependent partners where the adult interdependent partners are living separate and apart and there is no possibility of reconciliation.

(2) The Court, in making a support order, may direct an adult interdependent partner to pay periodic sums or a lump sum, or both, for any period and on any terms that the Court thinks reasonable for the support of the other adult interdependent partner.

(3) Where an application is made for an order under subsection (1), the Court may, on application by either or both of the adult interdependent partners, make an interim order requiring an adult interdependent partner to pay periodic sums or a lump sum, or both, for any period and on any terms that the Court thinks reasonable for the support of the other adult interdependent partner, pending the determination of the application under subsection (1).

(4) In making an order under subsection (1) or an interim order under subsection (3), the Court must take into consideration the condition, means, needs and other circumstances of each adult interdependent partner, including

- (a) the length of time the adult interdependent partners lived together,
- (b) the functions performed by each adult interdependent partner during the period they lived together, and
- (c) any order, agreement or arrangement between the adult interdependent partners.

(5) The Court may make a variation order varying, rescinding or suspending, prospectively or retroactively, a support order or any provision of a support order on application by either or both of the adult interdependent partners.

(6) Before the Court makes a variation order, the Court must satisfy itself

- (a) that a change in the condition, means, needs or other circumstances of either adult interdependent partner has occurred since the making of the support order or the last variation order made in respect of that order, or

- (b) that evidence of a substantial nature that was not available at the previous hearing has become available,

and, in making the variation order, the Court must take that change of circumstances or evidence into consideration.

(7) Where a support order provides for support for a definite period or until a specified event occurs, the Court may not, on an application instituted after the expiration of that period or the occurrence of the event, make a variation order for the purpose of resuming that support unless the Court is satisfied that

- (a) a variation order is necessary to relieve economic hardship arising from a change described in subsection (6)(a) that is related to the adult interdependent relationship, and
- (b) the changed circumstances, had they existed at the time of the making of the support order or the last variation order made in respect of that order, as the case may be, would likely have resulted in a different order.

**** Quicklaw Table ****

Provision	Changed by	In force	Authority
17.1	SA 2002 cA-4.5 s31	2003 Jun 1	O.C. 202/2003

History: SA 2002 cA-4.5 s31

Alimony after judicial separation

18 (1) When a judgment for judicial separation has been given, the Court may in an action for alimony order that the defendant pay to the plaintiff until further order, or during their joint lives or during a shorter period, a periodical sum as alimony.

(2) When a decree for restitution of conjugal rights has been granted, the Court may make a similar order, to take effect in the event of the decree not being complied with.

History: RSA 1980 cD-37 s17

Liability for necessaries

19 When an interim or other order for alimony is subsisting and the payment of alimony is not in arrears under that order, the defendant is not liable for necessaries supplied to the plaintiff.

History: RSA 1980 cD-37 s18

and may again revive the order wholly or in part, as the Court thinks fit.

History: RSA 1980 cD-37 s25

Support agreement

27(1) Subject to subsection (2), an agreement containing support provisions, whether entered into before or after the enactment of this section, prevails over section 17 or 17.1.

(2) The Court may disregard the support provisions of an agreement referred to in subsection (1) if any of the following circumstances apply and the Court is of the opinion that the agreement would be inequitable:

- (a) the spouse or adult interdependent partner who challenges the agreement or a provision of it entered into the agreement without receiving independent legal advice;
- (b) in the case of spouses, a consideration in making the agreement or a provision of it was the removal by one spouse of barriers that would prevent the other spouse's remarriage within that spouse's faith;
- (c) in the case of adult interdependent partners, they married each other after they entered into the agreement;
- (d) one of the spouses or adult interdependent partners is on social assistance without reasonable support from the other spouse or adult interdependent partner.

**** Quicklaw Table ****

Provision	Changed by	In force	Authority
27	SA 2002 cA-4.5 s31	2003 Jun 1	O.C. 202/2003

History: RSA 2000 cD-14 s27; SA 2002 cA-4.5 s31

**Part 4
Protection Orders**

Definitions

28 In this Part,

(a) "child" means a child who

(i) is under the age of 16 years, or

(ii) is 16 years of age or over but unable, by reason of illness, disability or other cause, to withdraw from the charge of the child's parents or to obtain the necessaries of life;

(b) "Director of Maintenance Enforcement" means the Director of Maintenance Enforcement under the Maintenance Enforcement Act.

History: 1995 c23 s10; 1996 c28 s14

Enforcement

29 This Part applies to judgments or orders for the payment of maintenance or alimony, or both,

- (a) of the Court under the Divorce Act (Canada), this Act or any other Act;
- (b) of a provincial judge.

History: RSA 1980 cD-37 s26

Desertion

30 (1) A married person is deemed to have been deserted within the meaning of this Part when the person is, in fact

- (a) deserted by the person's spouse, or
- (b) living apart from the person's spouse,

whether on account of cruelty on the part of the spouse or on account of the refusal or neglect by the spouse without sufficient cause to supply the person with food and other necessaries when able to do so.

- (2) A married person deserted by the person's spouse may apply, by an affidavit setting out facts material to the application, to a justice of the peace who, on being satisfied that the spouse has neglected or refused without sufficient cause to provide reasonable maintenance for the applicant or the applicant and their children, and has deserted the applicant, may summons the spouse to appear before a provincial judge.
- (3) The applicant shall serve the summons either personally or in a manner that a provincial judge may in writing direct.
- (4) On the spouse appearing before a provincial judge, the judge shall ask the spouse whether the spouse accepts liability for the maintenance of the applicant or the applicant and their children, as the case may be, according to the application.

TAB 4

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Current to Alberta Gazette April 30, 2004

RSA 2000, c. E-8

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Interpretation

1 (1) In this Act,

(a) "additional voluntary contributions" means contributions made by a member to a pension plan that are additional to those that the member is required to make to attain a pension, except optional ancillary contributions and contributions whose payment, under the terms of the plan, imposes on the employer an obligation to make concurrent additional contributions, and includes compounded interest on those additional voluntary contributions;

(b) "administrator" means

(i) subject to subclause (ii), in relation to

59 (1) Notwithstanding the Matrimonial Property Act or any other rule of law or equity to the contrary, the Court shall not make a matrimonial property order dividing or distributing a benefit or any portion of a benefit except in a manner that complies with this Part.

(2) Nothing in subsection (1) prevents the Court from distributing, under the Matrimonial Property Act, property that is not a benefit in a manner that takes account of how a benefit is to be divided or distributed in compliance with this Part.

History: 1999 c21 s35

Application

60 (1) This Part applies with respect to the division and distribution of benefits where, as between a member-pension-partner and the non-member-pension-partner, a matrimonial property order or agreement is filed with an administrator, and this Part applies notwithstanding any other provision of this Act, except as specifically stated, and notwithstanding any other rule of law or equity to the contrary.

(2) This Part applies only with respect to a matrimonial property order made or agreement entered into

- (a) on or after March 1, 2000,
- (b) before March 1, 2000 if there is filed with the administrator a written election by both pension partners to have this Part apply.

**** Quicklaw Table ****

Provision	Changed by	In force	Authority
60	SA 2002 cA-4.5 s33	2003 Jun 1	O.C. 202/2003

History: RSA 2000 cE-8 s60; SA 2002 cA-4.5 s33

Matrimonial property orders

61 Subject to this Part, the entitlement of any person to a benefit is subject to entitlements arising under a matrimonial property order or agreement filed with the administrator.

History: 1999 c21 s35

Division and distribution of benefits

62 Benefits must be divided between the member-pension-partner and the non-member-pension-partner, and the non-member-pension-partner's share distributed, in accordance with this Part and the

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "applicant" means a person who brings an application under this Act;
- (b) "birth" means birth as defined in the Vital Statistics Act and includes a stillbirth as defined in that Act;
- (c) "child", except in Part 1 and Part 3, means a person who is under the age of 18 years;
- (d) "contact order" means an order made under section 35;
- (e) "court" means the Court of Queen's Bench or the Provincial Court, as the case may be;
- (f) "father" means
 - (i) unless subclause (ii) or (iii) applies, the biological father of a child, including a male person described in section 13(2)(a),
 - (ii) in the case of an adopted child, a male person who adopts the child, or
 - (iii) a male person described in section 13(2)(b);
- (g) "grandparent" means the parent of a person's father or mother;
- (h) "Minister" means the Minister determined under section 16 of the Government Organization Act as the Minister responsible for this Act;
- (i) "mother" means
 - (i) unless subclause (ii) or (iii) applies, the person who gives birth to a child,
 - (ii) in the case of an adopted child, a female person who adopts the child, or
 - (iii) a female person described in section 12(6);
- (j) "parent" means the father or mother of a child;
- (k) "parenting order" means an order made under section 32;
- (l) "party" means a party as defined in the regulations;

- (i) who is under the age of 18 years, or
 - (ii) who is at least 18 years of age but not older than 22 years of age, and is unable to withdraw from his or her parents' charge because he or she is a full-time student as determined in accordance with the prescribed guidelines;
- (c) "child support agreement" means an agreement entered into under section 53;
- (d) "child support order" means an order made under section 50;
- (e) "prescribed guidelines" means the guidelines established under the regulations;
- (f) "spousal or adult interdependent partner support order" means an order made under section 57;
- (g) "spouse" includes a former spouse and a party to a marriage despite the fact that the marriage is void or voidable;
- (h) "support order" means
- (i) a child support order, or
 - (ii) a spousal or adult interdependent partner support order,
- and includes an interim order for support made under section 84.

Division 1

Support of Child

Definition

47 In this Division, "parent" includes a person standing in the place of a parent.

Standing in the place of a parent

48(1) A person is standing in the place of a parent if the person

- (a) is the spouse of the mother or father of the child or is or was in a relationship of interdependence of some permanence with the mother or father of the child, and
- (b) has demonstrated a settled intention to treat the child as the person's own child.

(2) In determining whether a person has demonstrated a settled intention to treat the child as the person's own child, the court may consider any or all of the following factors:

- (a) the child's age;

TAB 6

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Current to Alberta Gazette April 30, 2004

RSA 2000, c. M-5

MARRIAGE ACT

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Preamble

WHEREAS marriage is an institution the maintenance of which in its purity the public is deeply interested in;

WHEREAS marriage is the foundation of family and society, without which there would be neither civilization nor progress;

WHEREAS marriage between a man and a woman has from time immemorial been firmly grounded in our legal tradition, one that is itself a reflection of long standing philosophical and religious traditions; and

WHEREAS these principles are fundamental in considering the solemnization of marriage;

History: RSA 2000 cM-5 Preamble

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "Director" means the Director of Vital Statistics appointed under the Vital Statistics Act;
- (b) "issuer" means an issuer of marriage licences appointed under section 12;
- (c) "marriage" means a marriage between a man and a woman;
- (d) "member of the clergy" means a person qualified to be registered under section 4;
- (e) "Minister" means the Minister determined under section 16 of the Government Organization Act as the Minister responsible for this Act.

History: RSA 1980 cM-6 s1; 1983 c86 s2; 2000 c3 s4

Override of Charter and Alberta Bill of Rights

2 This Act operates notwithstanding

- (a) the provisions of sections 2 and 7 to 15 of the Canadian Charter of Rights and Freedoms, and
- (b) the Alberta Bill of Rights.

History: 2000 c3 s5

Persons authorized to solemnize marriage

3 No person shall solemnize a marriage except

- (a) a member of the clergy registered under this Act, or

TAB 7

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Current to Alberta Gazette April 30, 2004

RSA 2000, c. M-8

MATRIMONIAL PROPERTY ACT

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "Court" means the Court of Queen's Bench;
- (b) "household goods" means personal property
 - (i) that is owned by one or both spouses, and
 - (ii) that was ordinarily used or enjoyed by one or both spouses or one or more of the children residing in the matrimonial home, for transportation, household, educational, recreational, social or esthetic purposes;
- (c) "matrimonial home" means property
 - (i) that is owned or leased by one or both spouses,
 - (ii) that is or has been occupied by the spouses as their family home, and
 - (iii) that is
 - (A) a house, or part of a house, that is a self-contained dwelling unit,
 - (B) part of business premises used as living accommodation,
 - (C) a mobile home,
 - (D) a residential unit as defined in the Condominium Property Act, or
 - (E) a suite;

- (d) "matrimonial property order" means a distribution by the Court under section 7 and an order under section 9;
- (e) "spouse" includes a former spouse and a party to a marriage notwithstanding that the marriage is void or voidable.

History: RSA 1980 cM-9 s1

Knowledge of void marriage

2 Nothing in this Act confers a right on a spouse who at the time of marriage knew or had reason to believe that the marriage was void.

History: RSA 1980 cM-9 s2

**Part 1
Matrimonial Property**

Application by spouse

3 (1) A spouse may apply to the Court for a matrimonial property order only if

- (a) the habitual residence of both spouses is in Alberta, whether or not the spouses are living together,
- (b) the last joint habitual residence of the spouses was in Alberta, or
- (c) the spouses have not established a joint habitual residence since the time of marriage but the habitual residence of each of them at the time of marriage was in Alberta.

(2) Notwithstanding subsection (1), if a statement of claim for divorce is issued under the Divorce Act (Canada) in Alberta, the plaintiff or the defendant may apply for a matrimonial property order.

History: RSA 1980 cM-9 s3

Form of application

4 An application for a matrimonial property order shall be made by statement of claim.

History: RSA 1980 cM-9 s4

Conditions precedent to application

5 (1) A matrimonial property order may only be made