

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

**ROBERT T. STRICKLAND, GEORGE CONNON, ROLAND AUER,
IWONA AUER-GRZESIAK, MARK AUER and VLADIMIR AUER by
his Litigation Representative ROLAND AUER**

Appellants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

FACTUM OF THE RESPONDENT

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*, SOR/2002-156)

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PART I – STATEMENT OF FACTS

A. Overview

1. Provincial superior courts can hear administrative law challenges to the validity of federal regulations they are required to apply in exercising their subject-matter jurisdiction. The Federal Court therefore properly concluded that the superior courts have concurrent jurisdiction to consider whether the *Federal Child Support Guidelines* (the *Guidelines*) are *ultra vires* the *Divorce Act* in the context of *Divorce Act* proceedings “because jurisdiction over subject-matter must include every legal and factual element necessary to deal with the subject matter”.¹

2. While section 18 of the *Federal Courts Act* precludes litigants from bringing a stand-alone application in the superior courts challenging the *vires* of the *Guidelines* on administrative law grounds, it does not oust the courts’ jurisdiction to consider the challenge in *Divorce Act* proceedings. This interpretation of s. 18 preserves the Federal Court’s exclusive jurisdiction over judicial review applications while promoting access to justice for litigants in proceedings under the *Divorce Act*. Hiving off these administrative law challenges, for exclusive determination by the Federal Court, would create a bifurcated system of justice in *Divorce Act* proceedings, lead to piecemeal litigation in different courts and increase the cost and complexity for litigants. The recent jurisprudence of this Court warns against these barriers to justice.²

3. After finding concurrent jurisdiction, the Federal Court reasonably exercised its discretion to defer the *vires* question to the superior court in the context of *Divorce Act* proceedings. Based on the adequate alternative remedy principle, relevant considerations favour deferral. Superior courts have significantly more experience and expertise in administering the *Divorce Act* and the *Guidelines* than the Federal Court does. It also makes practical sense for the *vires* issue to be determined in the factual and legal context of *Divorce Act* proceedings where those directly

¹ Reasons for Order of the Federal Court dated May 6, 2013 (Federal Court’s Reasons) at para 25, **Appellants’ Record, Tab 1, p 14.**

² *Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62, [2010] SCJ No 62 at paras 18, 19, **Appellants’ Authorities, Vol I, Tab 12**; *R v Conway*, 2010 SCC 22, [2010] 1 SCJ 22 at para 79, **Respondent’s Authorities, Tab 27**; *Mission Institution v Khela*, 2014 SCC 24, [2014] SCJ No 24 at paras 3, 47, 49, 63, 70, **Respondent’s Authorities, Tab 24.**

affected are participants. Further, deferral is consistent with access to justice in a single forum. Finally, the superior courts can grant effective, meaningful and practical relief. If a superior court finds that the *Guidelines* are unlawful, the court can determine the child support payable without reference to the *Guidelines*. That remedy may achieve the appellants' ultimate objective - a downward variation in the amount of child support payable.

B. Facts

1. Superior Court Jurisdiction Over *Divorce Act* Proceedings

4. Section 91 of the *Constitution Act, 1867* gave Parliament exclusive jurisdiction to regulate the law of marriage and divorce including ancillary jurisdiction over corollary matters such as support and custody. However, until July 2, 1968 when the first federal *Divorce Act* was enacted, there was no uniform federal divorce law in Canada.³

5. Before 1968, there was a patch-work of divorce laws across the provinces. Quebec and Newfoundland had no divorce law. Residents of those provinces wanting a divorce had to apply to Parliament for a bill of divorce. British Columbia, Alberta, Saskatchewan, Manitoba and the northern territories applied England's *Matrimonial Causes Act, 1857*. Parliament's *Divorce Act (Ontario), 1930* authorized divorces in the courts of Ontario for Ontario residents. Finally, laws enacted by the colonial governments prior to Confederation in 1867 governed divorce in the three Maritime provinces.⁴

6. In those provinces where divorce laws were applied, county and/or superior courts had responsibility for administering them.⁵ This responsibility included the power to make interim and final orders with respect to the maintenance and education of the children of the marriage (i.e. child support).⁶

³ Christine Davies, *Family Law in Canada*, 4th ed (Toronto: Carswell Legal Publications, 1984) at 325, **Respondent's Authorities, Tab 38.**

⁴ *Ibid* at 325-327, **Respondent's Authorities, Tab 38.**

⁵ *Ibid* at 328, **Respondent's Authorities, Tab 38**; Julian D. Payne, *The Law & Practice Relating to Divorce*, 2nd ed (Toronto: Carswell, 1964) at 6-23, **Respondent's Authorities, Tab 40.**

⁶ Payne, *supra* at 576-581, **Respondent's Authorities, Tab 40.**

7. The *Divorce Act* of 1967-68 provided a “Canada-wide law of divorce exclusively located in one statute”.⁷ Parliament gave jurisdiction over *Divorce Act* proceedings, including issues of child support, to the provincial superior courts.⁸ Parliament granted limited jurisdiction to the Divorce Division of the Exchequer Court to hear *Divorce Act* proceedings only where two proceedings were commenced in different courts on the same day and not discontinued within thirty days.⁹

8. When the Federal Court of Canada was created in 1970, Parliament gave the Court exclusive jurisdiction to supervise federal boards, commissions or other tribunals.¹⁰ Parliament never intended the *Federal Court Act* to affect the jurisdiction of the superior courts over divorce or bankruptcy (which, like divorce, is another federal matter administered by the provincial superior courts): “We are not grabbing back jurisdiction, as the hon. member suggests. We have left bankruptcy where it is, and we have left divorce where it is”.¹¹

9. Subsequent amendments to the *Divorce Act*¹² left jurisdiction to hear matters relating to divorce, corollary relief and variation proceedings principally with provincial superior courts.¹³ Like the Exchequer Court it replaced, the Federal Court has jurisdiction only in the limited circumstances where the spouses commenced two proceedings in different provincial superior courts on the same day and neither proceeding is discontinued within thirty days.¹⁴

10. In its almost 45-year history, the Federal Court has assumed jurisdiction in only three *Divorce Act* proceedings.¹⁵ Two of those cases date back to the 1970s.

⁷ Davies, *supra* at 328, **Respondent’s Authorities, Tab 38**.

⁸ *Divorce Act*, 1967-68, c 24, ss 2 “court for any province” and 5.

⁹ *Ibid*, s 5(2)(b).

¹⁰ *Federal Court Act*, RSC 1970 (2nd Supp), c 10, ss 3, 4, 17, 18; *The Federal Courts Act*, RSC 1985, c F-7, as am, came into force in 2002, s 18.

¹¹ Canada, House of Commons Debates, 28th Parliament, 3rd Sess: Vol I (October 29, 1970) at 707 (Hon. Turner), **Respondent’s Authorities, Tab 41**.

¹² *Federal Court Act*, RSC 1970 (2nd Supp), c 10, s 65; *Divorce Act*, RSC 1985 c 3 (2nd Supp), ss 3, 4, 5; *Divorce Act*, SC 1993, c 8, ss 1-5; *Divorce Act*, SC 2002, c 8, s 183(1)(i).

¹³ *Divorce Act*, RSC 1985 c 3 (2nd Supp) as am, ss 3(1), 4(1) and 5(1).

¹⁴ *Ibid*, ss 3(3), 4(3) and 5(3).

¹⁵ *Nelson v Nelson* (1972), 31 DLR (3d) 584, [1972] FCJ No 1134 (TD), **Respondent’s Authorities, Tab 25**; *Williamson v Williamson*, 1976 CarswellNat 655, [1977] 1 ACWS 153 (FCTD), **Respondent’s Authorities, Tab 36**; *Hanson v Hanson*, 1998 CarswellNat 3094 (FCTD), **Respondent’s Authorities,**

11. Under section 15.1 of the *Divorce Act*, the superior courts may make a child support order or interim order.¹⁶ Child support orders must be made “in accordance with the applicable guidelines” unless certain conditions are satisfied.¹⁷ “Applicable guidelines” in *Divorce Act* proceedings means the *Federal Child Support Guidelines* or, where a province has been designated by the Governor in Council under s. 2(5) of the *Divorce Act*, the laws of the designated province.¹⁸

12. Section 26.1(1) of the *Divorce Act* grants the Governor in Council authority to enact the *Guidelines*.¹⁹ Section 26.1(2) sets out the principle that must be taken into account in establishing the guidelines:

The guidelines shall be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation.

Les lignes directrices doivent être fondées sur le principe que l'obligation financière de subvenir aux besoins des enfants à charge est commune aux époux et qu'elle est répartie entre eux selon leurs ressources respectives permettant de remplir cette obligation.

13. The *Guidelines* came into force on May 1, 1997.²⁰

2. The Appellants

14. Roland Auer, Robert Strickland and George Connon are fathers who pay child support. They reside in Quebec, Nova Scotia, and Alberta respectively.²¹

Tab 17. The same litigants returned to Federal Court on a related issue in *Hanson v Hanson*, 1998 CarswellNat 2443 (FCTD), **Respondent's Authorities, Tab 16.**

¹⁶ *Divorce Act*, RSC 1985 c 3 (2nd Supp) as am, s 15.1(1)-(2).

¹⁷ *Ibid*, s 15.1(3)-(8).

¹⁸ *Ibid*, s. 2(1) “applicable guidelines”. There are three designated provinces: Manitoba, Quebec, and New Brunswick. Except for the province of Quebec, which adopted its own child support model, the guidelines in the other two designated provinces are almost identical to the *Guidelines*.

¹⁹ *Ibid*, s. 26.1(1).

²⁰ *Federal Child Support Guidelines*, SOR/97-175, as am.

²¹ Affidavit of Roland Auer sworn May 28, 2012, **Appellants' Record, Tab 12, pp 75-84**; Affidavit of Robert Strickland sworn August 23, 2012, **Appellants' Record, Tab 15, pp 92-94**; Affidavit of George Connon sworn August 7, 2012, **Appellants' Record, Tab 14, pp 89-90**.

15. Roland Auer is the only appellant who pays child support pursuant to an order made in proceedings under the *Divorce Act*. He obtained a divorce judgment in 2008 and was ordered to make child support payments for one child from his second marriage. The Alberta Court of Queen's Bench varied the child support order twice, most recently on December 13, 2010.²²

16. Iwona Auer-Grzesiak, Mark Auer and Vladimir Auer are Roland Auer's first wife, adult son from that marriage and minor son from Roland Auer's third marriage respectively. All three claim to have been adversely affected by the amount of child support Roland Auer is required to pay pursuant to the child support/variation order in respect of the child of his second marriage.²³

17. Neither Robert Strickland nor George Connon are subject to child support orders under the *Divorce Act* although Robert Strickland is a party to a divorce action. Both pay child support voluntarily pursuant to agreements negotiated with their spouses in accordance with the *Guidelines*.²⁴

3. Federal Court Declined to Hear the Application

18. The appellants commenced an application for judicial review in the Federal Court challenging the *Guidelines* and seeking an order declaring them *ultra vires* the *Divorce Act* and "of no force or effect".²⁵

19. The appellants contend that the *Guidelines* are too prescriptive and include fixed assumptions that do not necessarily reflect the true circumstances of spouses. They say the *Guidelines* produce unfair results, having regard to the financial circumstances of each spouse. They allege that, in many instances, the *Guidelines* overcompensate the former spouses where

²² Federal Court's Reasons at para 7, **Appellants' Record, Tab 1, pp 4-5**; Order of the Court of Queen's Bench of Alberta dated December 13, 2010, Exhibit B to Roland Auer's Affidavit (Order of the Court of Queen's Bench of Alberta), **Appellants' Record, Tab 12, pp 81-84**

²³ Federal Court's Reasons at para 8, **Appellants' Record, Tab 1, p 5**; Reasons for Judgment of the Federal Court of Appeal dated February 5, 2014 (Federal Court of Appeal's Reasons) at paras 4-5, **Appellants' Record, Tab 2, pp 33-34**; Affidavit of Iwona Auer-Grzesiak sworn April 16, 2012, **Appellants' Record, Tab 11, pp 71-73**; Affidavit of Mark Auer, sworn April 11, 2012, **Appellants' Record, Tab 10, pp 68-69**; Affidavit of Roland Auer, sworn May 28, 2012 at para12, **Appellants' Record, Tab 12, p 77**.

²⁴ Federal Court of Appeal's Reasons at para 4, **Appellants' Record, Tab 2, p 33**.

²⁵ Notice of Application, **Appellants' Record, Tab 3, p 43**.

there is a shared custody arrangement and the children reside part time with the payor parent and this is inconsistent with s. 26.1(2) of the *Divorce Act*.²⁶

20. The respondent moved to dismiss the application on grounds that only one of the appellants had standing to challenge the *Guidelines*, the application was a collateral attack on existing child support orders/agreements or otherwise an abuse of process, and the Federal Court should exercise its discretion and decline to hear the application because of the existence of an adequate alternative remedy. The Federal Court (Gleason J.) granted the motion.²⁷

21. Justice Gleason found that the Federal Court and provincial superior courts have concurrent jurisdiction to hear arguments that the *Guidelines* are *ultra vires* the *Divorce Act*. The Federal Court has jurisdiction pursuant to ss. 18 and 18.1 of the *Federal Courts Act* to judicially review federal subordinate legislation including the *Guidelines*.²⁸ Provincial superior courts also have jurisdiction, in the context of proceedings under the *Divorce Act*, to hear administrative law challenges to the *Guidelines* “because jurisdiction over a subject-matter must include every legal and factual element necessary to deal with the subject matter”.²⁹ However, the Court recognized that provincial superior courts lack jurisdiction to consider stand-alone applications for a declaration about the *vires* of federal subordinate legislation.³⁰

22. The Federal Court found that only two of the appellants had standing to challenge the *Guidelines*: Roland Auer and Robert Strickland.³¹ The other appellants lacked private interest standing because they were not subject to child support orders made in the context of *Divorce Act* proceedings.³² They lacked public interest standing because the *vires* claim could be made in the context of a divorce proceeding before a superior court and that is a reasonable and effective way to bring the issue before the courts.³³

²⁶ *Ibid*, Appellants’ Record, Tab 3, pp 43-46.

²⁷ Federal Court’s Reasons, Appellants’ Record, Tab 1, p 28.

²⁸ *Ibid* at paras 12-15, Appellants’ Record, Tab 1, pp 6-8.

²⁹ *Ibid* at para 25, Appellants’ Record, Tab 1, p 14.

³⁰ *Ibid* at para 24, Appellants’ Record, Tab 1, p 14.

³¹ *Ibid* at para 41, Appellants’ Record, Tab 1, p 19.

³² *Ibid* at para 36, Appellants’ Record, Tab 1, p 18.

³³ *Ibid* at para 40, Appellants’ Record, Tab 1, p 19.

23. The Court concluded that, in Robert Strickland’s case, the application was an impermissible collateral attack on the agreement reached in the context of his *Divorce Act* proceedings and an abuse of the court’s process.³⁴

24. Roland Auer’s application was not a collateral attack on the existing variation order because the order was made “without prejudice” to Mr. Auer’s “federal challenge to the *Federal Child Support Guidelines*”.³⁵ The Court held that the order expressly left open the possibility of changes resulting from the Federal Court application and therefore the doctrine of collateral attack and abuse of process did not apply.³⁶

25. The Court nonetheless decided to exercise its discretion to not hear Mr. Auer’s application. An adequate alternative remedy was available in the Alberta Court of Queen’s Bench because it has concurrent jurisdiction to consider the *vires* of the *Guidelines* in the context of a proceeding under the *Divorce Act*. The superior court was also the more appropriate forum to hear the challenge “given the fact that it applies the *Divorce Act* and the *Guidelines* on a daily basis and this Court [the Federal Court] is virtually never called upon to do so”.³⁷ The provincial superior courts’ expertise in family law and child support matters means they are better placed than the Federal Court to hear challenges to the *Guidelines*.³⁸

4. Federal Court of Appeal Dismissed the Appeal

26. The Federal Court of Appeal unanimously dismissed the appeal.³⁹ The Court agreed with Gleason J. that “provincial superior courts have jurisdiction to determine the *vires* of the *Guidelines* in the context of proceedings for which they have jurisdiction under the *Divorce Act* and to decline to apply them if found to be *ultra-vires*”.⁴⁰

³⁴ *Ibid* at paras 42-48, **Appellants’ Record, Tab 1, pp 19-22.**

³⁵ *Ibid* at para 49, **Appellants’ Record, Tab 1, p 22.**

³⁶ *Ibid* at paras 50-56, **Appellants’ Record, Tab 1, pp 22-24.**

³⁷ *Ibid* at para 58, **Appellants’ Record, Tab 1, p 25.**

³⁸ *Ibid* at para 61, **Appellants’ Record, Tab 1, p 26.**

³⁹ Judgment of the Federal Court of Appeal dated February 5, 2014, **Appellants’ Record, Tab 2, p 30.**

⁴⁰ Federal Court of Appeal’s Reasons at para 7, **Appellants’ Record, Tab 2, p 34.**

27. Contrary to the appellants' assertion, the Court of Appeal did not "accept" that all six of them had standing.⁴¹ Rather, the Court of Appeal found it unnecessary to consider the questions of standing or collateral attack/abuse of process because the Federal Court would not have exercised its discretion to hear the application in any event.⁴²

28. The Court of Appeal held that Gleason J. properly exercised her discretion not to hear the matter because there was an adequate alternative remedy available to the appellants – a challenge to the *Guidelines* in the context of *Divorce Act* proceedings in the superior courts. The Court relied on the following considerations to support deferral of the matter: (1) the superior courts have developed the expertise required to "properly assess the arguments in their factual context";⁴³ (2) the consequences of invalidating the *Guidelines* would be uncertain given their application outside the *Divorce Act* by virtue of provincial legislation and practice;⁴⁴ (3) spouses seeking child support, who are directly affected by challenges to the *Guidelines*, are parties to *Divorce Act* proceedings;⁴⁵ and (4) appellate courts hearing the challenge would benefit from the expertise of the provincial superior courts.⁴⁶

29. The Court of Appeal found that although the appellants cannot obtain a declaration of invalidity and an order quashing the *Guidelines*, the provincial superior court can provide adequate relief including a reduction of their child support obligations under the *Guidelines*.⁴⁷

⁴¹ Appellants' factum at para 132.

⁴² Federal Court of Appeal's Reasons at para 9, **Appellants' Record, Tab 2, pp 34-35.**

⁴³ *Ibid* at para 13, **Appellants' Record, Tab 2, p 36.**

⁴⁴ *Ibid* at para 14, **Appellants' Record, Tab 2, p 36.**

⁴⁵ *Ibid* at para 15, **Appellants' Record, Tab 2, p 36.**

⁴⁶ *Ibid* at para 16, **Appellants' Record, Tab 2, pp 36-37.**

⁴⁷ *Ibid* at paras 17-18, **Appellants' Record, Tab 2, p 37.**

PART II – ISSUES

30. The following issues are raised in this appeal:
- (a) Whether provincial superior courts have the jurisdiction to consider administrative law challenges to the *vires* of the *Guidelines* in the context of proceedings under the *Divorce Act*; and
 - (b) Whether the Federal Court properly exercised its discretion in declining to hear the appellants' judicial review application.

PART III – ARGUMENT

A. Superior Courts’ Jurisdiction to Hear *Vires* Challenge to the *Guidelines*

31. The Federal Court and Federal Court of Appeal correctly concluded that provincial superior courts have jurisdiction to hear a challenge to federal regulations on an administrative law basis where it is “an integral part of another claim that is otherwise within the jurisdiction of the court”.⁴⁸ As a result, the superior court can consider the legal question of whether the *Guidelines* are *ultra vires* the *Divorce Act* when that issue arises in the context of *Divorce Act* proceedings.

1. Jurisdiction To Decide All Legal Issues in Proceedings

32. Superior courts, like administrative tribunals, must have jurisdiction to resolve all legal questions “that are linked to matters properly before them”.⁴⁹ The Federal Court reasoned that “jurisdiction over a subject-matter must include every legal and factual element necessary to deal with the subject matter”.⁵⁰ That jurisdiction necessarily includes the power to consider administrative law challenges to the validity of federal regulations that they are required to apply.

33. In *Judicial Review of Administrative Action in Canada*, Brown and Evans conclude that, in the course of disposing of a matter within their jurisdiction, provincial superior courts can determine the *vires* of federal delegated legislation:

However, where the validity of federal delegated legislation, or of any other federal administrative action for that matter, arises collaterally before a provincial superior court in a proceeding that is not within the exclusive jurisdiction of the Federal Court, the superior court can decide the issue if it is necessary to dispose of the principal matter before it.⁵¹

⁴⁸ Federal Court’s Reasons at para 24, **Appellants’ Record, Tab 1, p 14**.

⁴⁹ *Conway, supra* at para 78, **Respondent’s Authorities, Tab 27**.

⁵⁰ Federal Court’s Reasons at para 25, **Appellants’ Record, Tab 1, p 14**.

⁵¹ Donald JM Brown and The Honourable John M Evans, *Judicial Review of Administrative Action in Canada* (Toronto: Thomson Reuters, 2013-2014) vol 1 at 2-87, **Respondent’s Authorities, Tab 37**.

34. The proposition that superior courts can determine the legality of the federal subordinate legislation they are responsible for administering is not novel. When proceedings are commenced against a person under a federal regulation in the superior courts, that person can defend the claim by arguing that the regulation is invalid. This is a permissible defence and, in that context, courts have expressed no concern about the consequences of deciding the validity of federal regulations.⁵² The fact that the outcome may be of national interest or application is inconsequential to the issue of jurisdiction.⁵³

35. Here, Parliament deliberately and expressly confirmed the jurisdiction of provincial superior courts over divorce, corollary relief and variation proceedings in ss. 3(1), 4(1) and 5(1) of the *Divorce Act*. The Federal Court properly characterized the jurisdiction of the superior courts under the *Divorce Act* as “virtually exclusive”.⁵⁴ In the context of those proceedings, provincial superior courts can order a spouse to “pay for the support of any or all children of the marriage” and in making such an order, those courts “shall do so in accordance with the applicable guidelines”.⁵⁵

36. As the Courts below correctly concluded, in order to give full meaning and effect to their jurisdiction under the *Divorce Act*, provincial superior courts must be able to hear and determine all challenges to the legality of the *Guidelines* arising in the context of matters of which they are seized.⁵⁶ Without this power, provincial superior courts cannot truly do justice as between the parties that are before them.

2. *Federal Courts Act Does Not Oust Superior Courts’ Jurisdiction*

37. Contrary to the appellants’ contention, the superior courts’ power to assess the administrative legality of subordinate federal legislation they are required to apply does not

⁵² *R v Taggart*, [1966] 1 OR 764 (CA), **Respondent’s Authorities, Tab 31**; *R v Davies* (1977), 14 Nfld & PEIR 1, [1977] NJ No 52 (NLCA) at 3-4 (QL), **Respondent’s Authorities, Tab 29**; *R v Duffy*, 2001 ABCA 124, [2001] AJ No 675, at paras 43-49, **Respondent’s Authorities, Tab 30**.

⁵³ *Fantasy Construction Ltd (Re)*, 2007 ABQB 502, [2007] AJ No 909 at para 61, **Respondent’s Authorities, Tab 12**.

⁵⁴ Federal Court’s Reasons at para 18, **Appellants’ Record, Tab 1, p 9**.

⁵⁵ *Divorce Act*, RSC 1985 c 3 (2nd Supp) as am, s 15.1(1) and(3).

⁵⁶ Federal Court’s Reasons at paras 17, 25, 28, 31, 47, **Appellants’ Record, Tab 1, pp 9, 14, 16 and 21**; Federal Court of Appeal’s Reasons at para 7, **Appellants’ Record, Tab 2, p 34**.

constitute an “exception” to s. 18 of the *Federal Courts Act*.⁵⁷ Finding concurrent jurisdiction does not erode or diminish the Federal Court’s exclusive jurisdiction over federal judicial review applications.

38. The language in s. 18(1) of the *Federal Courts Act* grants the Federal Court exclusive jurisdiction over judicial review proceedings involving federal boards, commissions and tribunals, which includes challenges to the *vires* of federal regulations promulgated by the Governor-in-Council.⁵⁸ The provision precludes provincial superior courts from hearing stand-alone applications challenging the *Guidelines*.⁵⁹ However, s. 18 does not represent a clear and explicit decision of Parliament to exclude superior courts from assessing the validity of the *Guidelines* altogether.⁶⁰

39. In *Delegated Legislation in Canada*, Holland and McGowan conclude that the *Federal Courts Act* limits a direct challenge in superior court, but does not oust the court’s jurisdiction to determine the validity of federal regulations in the course of its proceedings:

In the context of a collateral challenge to the validity of a particular regulation, the provincial courts must retain jurisdiction to entertain arguments and to rule upon the validity of the regulation in question. On our reading of the Federal Court[s] Act, all that statute does is limit the opportunities for direct challenge of the

⁵⁷ Appellants’ factum at para 29.

⁵⁸ *Canadian Council for Refugees v Canada*, 2008 FCA 229, [2008] FCJ No 1002 at paras 53-55, **Respondent’s Authorities, Tab 9**; *Saskatchewan Wheat Pool v Canada (Attorney General)* (1993), 67 FTR 98, [1993] FCJ No 902 at paras 6-8, 12-14, **Respondent’s Authorities, Tab 35**.

⁵⁹ *Saskatchewan Wheat Pool v Canada (Attorney General)* (1993), 107 DLR (4th) 63, [1993] SJ No 436 (SKCA) at paras 7-14, **Respondent’s Authorities, Tab 34**; *Saskatchewan Wheat Pool, supra* at paras 6-8, 12-14, **Respondent’s Authorities, Tab 35**; *Manitoba Hydro-Electric Board v Cross Lake First Nation et al*, 2005 MBQB 33 at paras 25-33, **Respondent’s Authorities, Tab 22**; *R v Cummins* (1997), 50 BCLR (3d) 262, [1997] BCJ No 2540 (SC) at para 42-52, **Respondent’s Authorities, Tab 28**; *Nolan v Canada (Attorney General)*, 1998 CanLII 14911 (ONSC) at paras 1, 28-29, **Respondent’s Authorities, Tab 26**; *Les Messageries Publi-Maison Ltée c La Société canadiennes des postes*, [1996] RJQ 547, [1996] JQ no 428 (CA) at paras 20-35, **Respondent’s Authorities, Tab 21**. But see: *Re Williams and Attorney General for Canada et al* (1983), 45 OR (2d) 291 (Div Ct) at 4 (QL), **Respondent’s Authorities, Tab 32**, in which the Ontario Divisional Court found it had jurisdiction to hear a pure *vires* challenge to federal subordinate legislation.

⁶⁰ *Groupe des éleveurs de volailles de l’est de l’Ontario v. Canadian Chicken Marketing Agency*, [1985] 1 FC 280, [1984] FCJ No 251 (TD) at 12 (QL), **Respondent’s Authorities, Tab 15**; *Fantasy Construction Ltd (Re)*, 2007 ABCA 335, [2007] AJ No 1182 at para 60, **Respondent’s Authorities, Tab 13**.

regulation. This is quite a different thing from requiring a court to enforce a regulation without regard to its legality.⁶¹

40. The Federal Court reached a similar conclusion in *Groupe des éleveurs de volailles de l'est de l'Ontario v. Canadian Chicken Marketing Agency*. It distinguished between a provincial superior court determining the validity of a federal regulation for the purposes of the matter before it and the court making a declaration in a proceeding brought solely for that purpose:

I have no doubt that were such a question relevant to a cause of action and to parties within the jurisdiction of a provincial superior court, and if the court were in a position, where, if it could not consider the validity of a federal regulation vis-à-vis its statutory authorization the court might have to give effect to an invalid regulation, then it should be able to consider that question and make a determination for the purposes of that action. But that is a different matter from making a declaration in a proceeding brought solely for that purpose.⁶²

41. As this Court held in *TeleZone*, it is not contrary to s. 18 for a superior court to consider a question about the legality of the decision of a federal board in the context of exercising its own subject-matter jurisdiction.⁶³ Similarly, in *Khela*, this Court found that s. 18 does not prevent the superior court from considering the administrative reasonableness of a federal board's detention decision as part of its jurisdiction over *habeas corpus*.⁶⁴ Applying the same reasoning, the superior court cannot be precluded from considering the *vires* of the *Guidelines* it applies as part of its jurisdiction over proceedings under the *Divorce Act*.

⁶¹ Denys C Holland and John P McGowan, *Delegated Legislation in Canada* (Toronto: Carswell, 1989) at 247, **Appellants' Authorities, Vol II, Tab 101**.

⁶² *Canadian Chicken Marketing Agency*, *supra* at 12, **Respondent's Authorities, Tab 15**.

⁶³ *TeleZone*, *supra* at para 6, **Appellants' Authorities, Vol I, Tab 12**. See also: *Canada (Attorney General) v McArthur*, 2010 SCC 63, [2010] SCJ No 63 at paras 14, 17, **Respondent's Authorities, Tab 6**; *Canadian Food Inspection Agency v Professional Institute of the Public Service of Canada*, 2010 SCC 66, [2010] SCJ No 66 at paras 21, 24-28, **Respondent's Authorities, Tab 10**; *Manuge v Canada*, 2010 SCC 67, [2010] SCJ No 67 at para 17, **Respondent's Authorities, Tab 23**.

⁶⁴ *Khela*, *supra* at paras 52-65, 72, **Respondent's Authorities, Tab 24**.

3. Jurisdiction Consistent With Access to Justice and the Rule of Law

42. Contrary to the appellants' arguments, a formalistic insistence on the separation of determinations of administrative invalidity from other substantive issues to which they are relevant is "inherently offensive"⁶⁵ to access to justice principles and the rule of law.

43. If the appellants are correct, it would mean superior courts are competent to hear all challenges to the legality of subordinate federal legislation except those raising administrative *vires* issues. Issues fundamental to the superior court proceedings would be carved out of the courts' realm, and presumably out of the realm of provincial courts and tribunals as well, for exclusive determination via judicial review applications in the Federal Court.

44. This would have implications beyond *Divorce Act* proceedings. It would limit superior courts in exercising the jurisdiction Parliament has granted them over federal matters through legislation such as, the *Bankruptcy and Insolvency Act*,⁶⁶ the *Customs Act*⁶⁷ and the *Competition Act*.⁶⁸ Further, it would undermine the ability of provincial courts to consider the validity of federal regulations in prosecutions under federal legislation, such as the *Fisheries Act*⁶⁹ and the *Customs Act*.⁷⁰

45. The piecemeal approach advocated by the appellants would not only be cumbersome and expensive for the parties but also extract the issue from its factual context and undermine the courts' ability to determine the issue against an evidentiary backdrop.⁷¹

46. Practically speaking, it results in bifurcated proceedings and procedural detours. In the midst of proceedings before courts or tribunals with subject-matter jurisdiction, if issues arise concerning the validity of federal regulations, the proceeding would be adjourned so that a separate application could be commenced before the Federal Court to determine the *vires*

⁶⁵ Appellants' factum at para 87.

⁶⁶ *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, s 183(1).

⁶⁷ *Customs Act*, RSC, 1985, c 1 (2nd Supp), s 139.1(1).

⁶⁸ *Competition Act*, RSC, 1985, c C-34, ss 34(2), 73(4).

⁶⁹ *Davies*, *supra* at 3-4 (QL), **Respondent's Authorities, Tab 29**.

⁷⁰ *Duffy*, *supra* at paras 43-49, **Respondent's Authorities, Tab 30**.

⁷¹ *Bell v Canada (Canadian Human Rights Commission); Cooper v Canada (Canadian Human Rights Commission)*, [1996] 3 SCR 854, [1996] SCJ No 115 at para 76, McLachlin J, dissenting, **Respondent's Authorities, Tab 4**.

question. Once determined by the Federal Court, the matter would then return to the court or tribunal to proceed with the hearing on the merits. This would require the litigants to appear before two different courts for redress arising from the same matter.

47. In *TeleZone*, this Court confirmed that parties should have redress in the courts through procedures that “minimize unnecessary cost and complexity”.⁷² In *Conway*, this Court affirmed the need for Canadians to assert their rights in the “most accessible forum available, without the need for bifurcated proceedings”⁷³ and Abella J. observed for a unanimous Court:

A scheme that favours bifurcating claims is inconsistent with the well-established principle that an administrative tribunal is to decide all matters, including constitutional questions, whose essential character falls within the tribunal’s specialized statutory jurisdiction.⁷⁴

48. Most recently in *Khela*, this Court favoured access to justice in the form of concurrent jurisdiction in the superior courts and Federal Court over bifurcated jurisdiction. The Court rejected the notion of piecemeal litigation because “bifurcation makes little sense” and would “undoubtedly lead to a duplication of proceedings and have a negative impact on judicial economy”.⁷⁵ The importance of local access to relief also animated the Court’s definition of the superior court’s jurisdiction.⁷⁶

49. Further, determining that superior courts have the requisite jurisdiction to entertain a *vires* challenge to federal subordinate legislation in the course of their proceedings is consistent with the rule of law. It ensures that the courts are not required to apply delegated legislation that is not authorized by the enabling legislation and should therefore not be treated as having the force of law. In that regard, the statement of this Court in *Canada (Attorney General) v Law Society of British Columbia* is equally applicable here:

At the same time it would leave the provincially-organized superior courts with the invidious task of execution of federal and provincials laws, to paraphrase the *Valin*

⁷² *TeleZone*, *supra* at para 18, **Appellants’ Authorities, Vol I, Tab 12.**

⁷³ *Conway*, *supra* at para 79, **Respondent’s Authorities, Tab 27.**

⁷⁴ *Ibid*, **Respondent’s Authorities, Tab 27.**

⁷⁵ *Khela*, *supra* at para 70, **Respondent’s Authorities, Tab 24.**

⁷⁶ *Ibid* at paras 47, 63, **Respondent’s Authorities, Tab 24.**

case, *supra*, while being unable to discriminate between valid and invalid federal statutes so as to refuse to “execute” the invalid statutes.⁷⁷

4. Superior Courts Can Grant Relief if *Guidelines Ultra Vires*

50. Subsection 18(1) of the *Federal Courts Act* provides exclusive jurisdiction to the Federal Court to issue prerogative writs and declarations aimed directly at a federal board.⁷⁸ As a result, the Federal Court of Appeal correctly concluded that only the Federal Court can declare the *Guidelines* invalid and set aside them aside, by way of one of the traditional administrative law remedies listed in s. 18(1) of the *Federal Courts Act*.⁷⁹

51. However, s. 18(1) does not preclude the provincial superior courts from finding the *Guidelines* are *ultra vires* the *Divorce Act*, determining the issue of corollary relief without reference to the *Guidelines* and issuing a divorce judgment accordingly.⁸⁰

52. The fact that the superior court cannot grant the same relief that is available on judicial review before the Federal Court does not impact the question of jurisdiction. Despite the significant differences between the remedial powers of the courts, in *Khela* this Court nonetheless found concurrent jurisdiction and determined that the superior courts can consider the reasonableness of an inmate transfer decision on an application for *habeas corpus*.⁸¹

53. Further, our legal system accepts that, in the course of deciding a case, important legal determinations can be made that have immediate legal effect on the parties only. For example, although tribunals are not competent to declare legislation unconstitutional, a tribunal that has jurisdiction to decide questions of law can consider constitutional questions and, in a case that is properly before it, can refuse to apply a law that it has determined to be unconstitutional.⁸²

⁷⁷ *Canada (Attorney General) v Law Society of British Columbia*, [1982] 2 SCR 307 at 15 (QL), **Respondent’s Authorities, Tab 5**; *Canadian Chicken Marketing Agency, supra* at 12, **Respondent’s Authorities, Tab 15**.

⁷⁸ *Telezone, supra* at paras 19, 52, **Appellants’ Authorities, Vol I, Tab 12**.

⁷⁹ Federal Court of Appeal’s Reasons at paras 17-18, **Appellants’ Record, Tab 2, p 37**.

⁸⁰ *Ibid* at para 18, **Appellants’ Record, Tab 2, p 37**.

⁸¹ *Khela, supra* at para 39, **Respondent’s Authorities, Tab 24**.

⁸² *Conway, supra* at paras 77-78, **Respondent’s Authorities, Tab 27**; *Cooper, supra* at paras 46, 70, McLachlin J, dissenting, **Respondent’s Authorities, Tab 4**.

54. Finally, the appellants' emphasis on the potential for "inconsistent rulings" from different courts is misplaced.⁸³ That is not a valid reason for precluding superior courts from considering the *vires* of federal regulations on administrative law grounds. In granting the courts' jurisdiction over *Divorce Act* proceedings, Parliament must have considered concerns about inconsistency and uncertainty, but "agreed to live with the possibility in the interest of easier access to justice".⁸⁴ The possibility of conflicting decisions on the same legal issues is ever-present in the Canadian court system. This Court is frequently called upon to resolve inter-jurisdictional differences of legal opinion, including questions of statutory interpretation affecting the meaning and enforceability of federal legislation.

55. In any event, as the Federal Court aptly perceived, the rationale adopted by the appellants for their challenge to the *vires* of the *Guidelines* strongly suggests that their ultimate objective is to obtain a ruling that would result in a "downward variation of the amount of child support [they are] paying".⁸⁵ A decision by the superior court not to apply the *Guidelines* in *Divorce Act* proceedings involving the appellants may achieve that objective effectively, immediately, and directly.

B. Adequate Alternative Remedy - Vires Challenge Before Provincial Superior Court

56. The Federal Court reasonably declined to exercise its jurisdiction to hear the judicial review application on the basis of the well-established principle that there is an adequate alternative remedy.⁸⁶ Gleason J. appropriately determined that "the place and time to raise a challenge to the *vires* of the *Guidelines* is before the provincial superior court in the context of the claim for child support, where the court will be called upon to apply the *Guidelines* or to

⁸³ Appellants' factum, paras 110, 137, 145.

⁸⁴ *TeleZone*, *supra* at para 50, **Appellants' Authorities, Vol I, Tab 12**.

⁸⁵ Federal Court's Reasons at para 5, **Appellants' Record, Tab 1, p 4**.

⁸⁶ *Ibid* at paras 57-61, **Appellants' Record, Tab 1, pp 24-26**; Federal Court of Appeal's Reasons at paras 10-18, **Appellants' Record, Tab 2, pp 35-37**; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61, [2011] SCJ No 61 at para 22, **Respondent's Authorities, Tab 3**; *Canadian Pacific Ltd v Matsqui Indian Band*, [1995] 1 SCR 3, [1995] SCJ No 1 at para 30, **Respondent's Authorities, Tab 11**; David J Mullan, *The Discretionary Nature of Judicial Review* (2009), CIAJ 2009 Annual Conference: Taking Remedies Seriously at 429-432, **Respondent's Authorities, Tab 39**.

explain why they should not apply”.⁸⁷ The Court’s approach was both practical and pragmatic in the circumstances.

1. Relevant Considerations Support Deferral to Provincial Superior Court

57. Judicial review is an inherently discretionary remedy.⁸⁸ A litigant may have the right to seek judicial review before the Federal Court, however, that does not mean that a litigant has “a right to require the Court to undertake judicial review”.⁸⁹

58. The Federal Court may decline jurisdiction where there exists an adequate alternative remedy. Remedy in this context refers broadly to an “alternative remedial forum” for the resolution of the issue, and not simply to the relief that may be ordered.⁹⁰ In this case, the relevant question is: whether the superior court is an “adequate forum” for resolving the appellants’ challenge to the *vires* of the *Guidelines* at first instance.⁹¹ As the Court of Appeal explained, a proper inquiry considers whether the alternate forum is adequate in all the circumstances. It need not be a perfect alternative.⁹²

59. This Court has determined that “a variety of factors should be considered by courts in determining whether they should enter into judicial review” or instead require an applicant to pursue their challenge in an alternate forum.⁹³ The adequacy of the relief that may be ordered in that alternate forum is only one consideration. An inquiry into the “adequacy” of the alternate forum includes the consideration of factors such as: the nature of the alternate forum (including

⁸⁷ Federal Court’s Reasons at para 47, **Appellants’ Record, Tab 1, p 21**.

⁸⁸ *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] SCJ No 12 at para 40, **Respondent’s Authorities, Tab 8**; *TeleZone*, *supra* at para 56, **Appellants’ Authorities, Vol I, Tab 12**; *Matsqui*, *supra* at para 30, **Respondent’s Authorities, Tab 11**; *Khela*, *supra* at para 41, **Respondent’s Authorities, Tab 24**; Mullan, *supra* at 421-422, **Respondent’s Authorities, Tab 39**.

⁸⁹ *Matsqui*, *supra* at para 30, **Respondent’s Authorities, Tab 11**.

⁹⁰ *Ibid* at paras 32-59, **Respondent’s Authorities, Tab 11**; *Harelkin v University of Regina*, [1979] 2 SCR 561 at 20-25 (QL), **Respondent’s Authorities, Tab 18**; *Canada (Auditor General) v Canada (Minister of Energy, Mines & Resources)*, [1989] 2 SCR 49, [1989] SCJ No 80 at paras 49, 59, **Respondent’s Authorities, Tab 7**.

⁹¹ *Matsqui*, *supra* at para 56, **Respondent’s Authorities, Tab 11**.

⁹² Federal Court of Appeal’s Reasons at para 17, **Appellants’ Record, Tab 2, p 37**. See also: *Froom v Canada (Minister of Justice)*, 2004 FCA 352, [2004] FCJ No 1735 at para 12, **Appellants’ Authorities, Vol I, Tab 31**.

⁹³ *Matsqui*, *supra* at para 37, **Respondent’s Authorities, Tab 11**.

its investigatory, decision-making and remedial capacities), the nature of the error, the convenience of the alternate forum, expeditiousness and costs.⁹⁴

60. A number of inter-related considerations favour deferral of the *vires* challenge to the *Guidelines* to the superior court in the context of *Divorce Act* proceedings: (1) the expertise of superior courts in divorce and child support matters; (2) the potential implications for provincial law and practice; (3) the opportunity for a more complete adversarial debate; (4) the effectiveness of the available remedy; and (5) the sound administration of justice.

61. Although the appellants' preference to have the challenge heard before the Federal Court warrants consideration, the factors outlined above militate against the Court assuming jurisdiction over this matter. In that vein, the Federal Court of Appeal properly determined that the considerations in favour of declining jurisdiction outweigh the benefits of a single application in Federal Court to determine the *vires* of the *Guidelines*:

Thus, although the prospect of a single proceeding in the Federal Court may be a factor that weighs in favour of the Federal Court hearing this application, it is not enough to outweigh the question of expertise, the potential implication for provincial law and practice and the fact that a more complete adversarial debate would result from having this matter heard in the context of proceedings under the *Divorce Act*.⁹⁵

(a) Superior Courts are Subject-Matter Experts

62. The expertise and experience of the alternate forum is a relevant consideration.⁹⁶ For example, in *Reza v. Canada*, where both the Ontario Superior Court and the Federal Court had jurisdiction, this Court agreed that the Federal Court was best suited to decide the matter because

⁹⁴ *Ibid*, **Respondent's Authorities, Tab 11**; *Harelkin, supra* at 21, **Respondent's Authorities, Tab 18**; Mullan, *supra* at 430-431, **Respondent's Authorities, Tab 39**; Brown and Evans, *supra* at 3-7, **Respondent's Authorities, Tab 37**.

⁹⁵ Federal Court of Appeal's Reasons at para 18, **Appellants' Record, Tab 2, p 37**.

⁹⁶ *Matsqui, supra* at para 59, **Respondent's Authorities, Tab 11**; *Harelkin, supra* at 23, **Respondent's Authorities, Tab 18**; *Reza v Canada*, [1994] 2 SCR 394, [1994] SCJ No 49 at para 21, **Respondent's Authorities, Tab 33**; *Action des nouvelles conjointes du Québec v Canada*, 2004 FC 797, [2004] FCJ No 971 at paras 46-48, **Respondent's Authorities, Tab 1**; Brown and Evans, *supra* at 3-34 – 3-35, **Respondent's Authorities, Tab 37**.

of its jurisdiction over the comprehensive scheme of review of immigration matters set out by Parliament.⁹⁷

63. Here, Gleason J. properly determined that the provincial superior court was “better placed” than the Federal Court to hear a challenge to the *Guidelines* based on its subject-matter expertise. Superior courts have the necessary expertise in child support matters because they apply the *Divorce Act* and the *Guidelines* on a daily basis.⁹⁸

64. As the Federal Court of Appeal explained, a principal consideration in favour of declining jurisdiction is that the arguments being advanced in the underlying application should be assessed in their factual context by a court that has expertise in the subject matter:

This is particularly important when one considers the nature of the arguments set out in paragraphs 14 and 15 of the application and the general allegation at paragraph 16 that the Guidelines are unreasonable and manifestly unjust, which involves looking at the impact of the Guidelines and the child support calculation formula on spouses and children in practice. Practical experience is relevant also when one considers that the Guidelines provide significant discretion to the provincial superior courts to depart from the statutory formula. According to the Appellants, such courts in fact rarely exercise that discretion. It would be difficult for the Federal Court to assess the validity of that contention.⁹⁹

65. The appellants allege that the *Guidelines* are inconsistent with the requirements of s. 26.1(2) of the *Divorce Act* as they do not consider the “relative abilities to contribute” of both spouses and they do not reasonably calculate amounts required to “maintain the children”.¹⁰⁰ These issues directly engage the expertise the superior courts have acquired in their administration of the *Divorce Act* and their application of the *Guidelines*.

⁹⁷ *Reza, supra* at para 21, **Respondent’s Authorities, Tab 33**.

⁹⁸ Federal Court’s Reasons at paras 3, 58, 61, **Appellants’ Record, Tab 1, pp 3, 25, 26**; Federal Court of Appeal’s Reasons at paras 10, 13, 18, **Appellants’ Record, Tab 2, pp 35-37**. See also: *Action des nouvelles, supra* at paras 46-48, **Respondent’s Authorities, Tab 1**.

⁹⁹ Federal Court of Appeal’s Reasons at para 13, **Appellants’ Record, Tab 2, p 36**.

¹⁰⁰ Notice of Application at para 11, **Appellants’ Record, Tab 3, p 44**.

66. In support of their challenge to the *Guidelines*, the appellants rely on numerous expert reports: two reports from professors of economics assessing the *Guidelines*;¹⁰¹ a report from a family law specialist on the framework and application of the *Guidelines* since their implementation;¹⁰² and a chartered accountant who reviews the government benefit figures and calculations.¹⁰³ Considering the matters being raised, sufficient judicial expertise in the area of child support and family law generally would benefit an adjudication of the merits.

67. The appellants argue that the Federal Court has more expertise with the administrative law concepts at play in a *vires* challenge.¹⁰⁴ These concepts are, however, not foreign to provincial superior courts, which are tasked with judicial review jurisdiction in their respective provinces. Coupled with their subject-matter expertise, the superior courts are more than competent to consider the arguments raised.¹⁰⁵

68. Finally, given the importance and impact of a decision about whether the *Guidelines* are *ultra vires* the *Divorce Act*, appeals up to this Court can be anticipated. With that consideration in mind, the Federal Court of Appeal reasoned that a provincial appellate court and the Supreme Court would “significantly benefit from the practical expertise that provincial superior courts have with such matters”.¹⁰⁶

(b) Potential Implications for Provincial Law and Practice

69. Based on the broad reach of the *Guidelines*, the Court of Appeal properly concluded that the consequences of issuing a declaration of general invalidity in the Federal Court would be uncertain.¹⁰⁷ Family law is an area of shared constitutional jurisdiction because of the federal responsibility for marriage and divorce and the provinces’ responsibility for property and civil

¹⁰¹ Affidavit of Chris Sarlo sworn August 24, 2012, **Appellants’ Record, Tab 16**; Affidavit of Douglas W Allen sworn August 29, 2012, **Appellants’ Record, Tab 17**.

¹⁰² Affidavit of Stacie Glazman sworn September 28, 2012, **Appellants’ Record, Tab 18**.

¹⁰³ Affidavit of Hakim Kapasi sworn September 28, 2012, **Appellants’ Record, Tab 19**.

¹⁰⁴ Appellants’ factum, paras 141-142.

¹⁰⁵ *Khela, supra* at para 57, **Respondent’s Authorities, Tab 24**.

¹⁰⁶ Federal Court of Appeal’s Reasons at para 16, **Appellants’ Record, Tab 2, pp 36-37**.

¹⁰⁷ *Ibid* at para 14, **Appellants’ Record, Tab 2, p 36**.

rights. The *Divorce Act* and the *Guidelines* apply in divorce cases unless both parents reside in a designated province.¹⁰⁸

70. Provincial and territorial laws, and provincial and territorial child support guidelines apply to parents who were never married to each other, and to married parents who separate and do not seek a divorce. All provinces and territories have adopted child support guidelines that are very similar to the *Guidelines* and use the Federal Child Support Tables (with the exception of Quebec).

71. For this reason, if the *Guidelines* were found to be *ultra vires*, this would have a significant impact on the provincial and territorial support guidelines. Those provincial laws are not however subject to the *vires* challenge in the Federal Court which is based on s. 26.1 of the *Divorce Act*.

(c) More Complete Adversarial Debate

72. Deferral to the superior court in the context of a divorce proceeding would ensure a more complete adversarial debate with the “full and proper participation of the spouse seeking child support”.¹⁰⁹ In this case, the spouses seeking support were not parties to the application filed with the Federal Court, even though the ultimate goal of reducing the child support obligations would have a direct and prejudicial effect on the spouses.

73. The Federal Court of Appeal recognized that the appellants’ challenge to the *vires* of the *Guidelines* cannot be fully understood and evaluated without a proper factual context.¹¹⁰ That such a context is essential to the dispute is illustrated by the appellants’ inability to describe the *vires* issue without referring to the factual context in which the *Guidelines* allegedly fail to respond to the requirements of the enabling legislation. The alleged negative impact of the *Guidelines* on each of the six appellants is explained through the affidavits filed in the judicial review proceeding. In a divorce proceeding before the superior court, the evidence of the support

¹⁰⁸ There are three designated provinces: Manitoba, New Brunswick and Quebec. These provinces have been designated by the Governor in Council under subsection 2(5) of the *Divorce Act* to have their own child support guidelines apply in divorce cases when both parents live in that designated province.

¹⁰⁹ Federal Court of Appeal’s Reasons at para 15, **Appellants’ Record, Tab 2, p 36**.

¹¹⁰ *Ibid* at para 13, **Appellants’ Record, Tab 2, p 36**. See also: *Cooper, supra* at para 76, McLachlin J, dissenting, **Respondent’s Authorities, Tab 4**.

recipients would also be available and would provide the court with the necessary information to have a complete factual context. Fundamentally, the appellants' complaint is about how the *Guidelines* apply in each of the support payor's specific situation and this is the context in which their arguments should be evaluated.

74. In order to fully and fairly adjudicate the *vires* issue, including the key question of whether the *Guidelines* result in unfairness, the court should have the benefit of arguments and evidence on both sides of the issue from persons directly affected. Although support recipients could participate in separate Federal Court proceedings if named as respondents or as potential interveners, this is an impractical and an unnecessarily expensive approach given that both affected parties can address the matter in the context of *Divorce Act* proceedings in the superior court.

(d) Effective, Meaningful and Practical Relief

75. Although the provincial superior court cannot grant the specific relief requested by the appellants in Federal Court - a declaration of invalidity and an order quashing the *Guidelines* - effective, meaningful and practical relief may be ordered.¹¹¹ As the Federal Court of Appeal found, the appellants are able to obtain an "adequate" remedy in superior court which may achieve their ultimate goal – a reduction of child support payments.¹¹²

76. In *Conway*, this Court focussed on whether the available remedy afforded "appropriate redress" and "meaningful" vindication in the circumstances, in considering whether the remedies available to a tribunal redressed the *Charter* wrongs.¹¹³

77. Similarly, in determining whether to defer to a comprehensive dispute resolution process, courts consider whether that process affords "effective redress" in light of the nature of the particular dispute.¹¹⁴ A remedy will not be viewed as "insufficient" simply because it differs

¹¹¹ Brown and Evans, *supra* at 3-35–3-37, **Respondent's Authorities, Tab 37.**

¹¹² Federal Court of Appeal's Reasons at paras 17-18, **Appellants' Record, Tab 2, p 37**

¹¹³ *Conway*, *supra* at para 103, **Respondent's Authorities, Tab 27.**

¹¹⁴ *Adams v Cusack*, 2006 NSCA 9, [2006] NSJ No 25 at paras 32, 35, **Respondent's Authorities, Tab 2; KA et al v The City of Ottawa et al** (2006), 80 OR (3d) 161 (CA) at para 21, **Respondent's Authorities, Tab 19.**

from the relief a court could order.¹¹⁵ The relevant consideration is whether the process provides a solution to the problem at the heart of the dispute.

78. The appellants contend that the Federal Court is the appropriate forum to deal with their challenge because they are simply seeking a declaration of invalidity and an order setting the *Guidelines* aside. Although they allege that they are not before the Court to “seek a reduction in what they pay”¹¹⁶ and “have no use, need or want of something else”¹¹⁷ other than a declaration of invalidity, this is a disingenuous claim. They do not seek a reduction in their support payments before the Federal Court because the Court cannot grant that relief. It is within the jurisdiction of the superior courts with the exception of the limited circumstances where both spouses file for divorce on the same day in different provinces and neither proceeding is discontinued within 30 days after it was commenced.

79. Roland Auer’s child support order, which allows him to return to superior court to revisit his support payments if his federal challenge to the *Guidelines* is successful, evinces this ultimate goal.¹¹⁸ Here, the superior court can fully consider the *vires* of the *Guidelines* in the context of the divorce proceeding it is seized with and grant relief which is effective, meaningful and practical in Mr. Auer’s situation.

80. The discretionary nature of the Federal Court’s remedial powers under s. 18.1 of the *Federal Courts Act* must not be overlooked in assessing the “adequacy” of the available relief in the superior court.¹¹⁹ Even if the Federal Court heard the application, it could ultimately decide no relief is warranted in the circumstances.¹²⁰ The Court may refuse to exercise its discretionary

¹¹⁵ *The City of Ottawa, supra* at para 20, **Respondent’s Authorities, Tab 19**; *Adams, supra* at paras 32-33, **Respondent’s Authorities, Tab 2**.

¹¹⁶ Appellants’ factum at para 7.

¹¹⁷ *Ibid* at para 135.

¹¹⁸ Order of the Court of Queen’s Bench of Alberta, *supra*, para 11, **Appellants’ Record, Tab 12, p 83**.

¹¹⁹ *Khela, supra* at para 64, **Respondent’s Authorities, Tab 24**; *Khosa, supra* at paras 36, 40, **Respondent’s Authorities, Tab 8**; *Matsqui, supra* at paras 30-31, **Respondent’s Authorities, Tab 11**; *Brown and Evans, supra* at 3-1-3-2, **Respondent’s Authorities, Tab 37**.

¹²⁰ *MiningWatch Canada v Canada (Minister of Fisheries and Oceans)*, 2010 SCC 2, [2010] SCJ No 2 at para 52, **Appellants’ Authorities, Vol I, Tab 50**; *Brown and Evans, supra* at 3-5, **Respondent’s Authorities, Tab 37**; *Mullan, supra* at 421-422, **Respondent’s Authorities, Tab 39**.

power and grant prerogative relief where an applicant has other avenues of redress,¹²¹ has delayed unreasonably in seeking a remedy¹²² or where the balance of convenience favours denying relief.¹²³

81. If a superior court finds that the *Guidelines* are *ultra vires* the *Divorce Act*, the court can decline to apply the *Guidelines* and make a child support order without regard to them. The courts can therefore provide an adequate remedy in the circumstances of this case.

(c) Consistent with the Sound Administration of Justice

82. By declining jurisdiction, the Federal Court was not abdicating its supervisory jurisdiction over federal boards, commissions and tribunals as the appellants imply. Rather, the approach employed is pragmatic and consistent with the sound administration of justice principles this Court relied on in *TeleZone*, *Conway* and *Khela*.¹²⁴ The convenience, costs and expeditiousness of the alternate forum are highly relevant considerations in determining “adequacy”.¹²⁵

83. Deferring administrative law challenges to federal subordinate legislation to the superior courts for consideration in the context of proceedings within their jurisdiction avoids procedural detours, bifurcated proceedings, unnecessary cost and complexity and wasted scarce judicial resources. Further, it provides litigants with “local access”.¹²⁶ In short, this approach provides access to justice in a single forum.

¹²¹ *Kourtessis v Canada*, (*Minister of National Revenue – MNR*), [1993] 2 SCR 53, [1993] SCJ No 45 at para 96, **Respondent’s Authorities, Tab 20**; *Khosa*, *supra* at para 40, **Respondent’s Authorities, Tab 8**.

¹²² *Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3, [1992] SCJ No 1 at para 105, **Respondent’s Authorities, Tab 14**.

¹²³ *MiningWatch*, *supra* at para 52, **Appellants’ Authorities, Vol I, Tab 50**

¹²⁴ *TeleZone*, *supra* at paras 18, 19, **Appellants’ Authorities, Vol I, Tab 12**; *Conway*, *supra* at para 79, **Respondent’s Authorities, Tab 27**; *Khela*, *supra* at paras 47, 49, 63, 70, **Respondent’s Authorities, Tab 24**.

¹²⁵ *Matsqui*, *supra* at para 37, **Respondent’s Authorities, Tab 11**; *Harelkin*, *supra* at 21, **Respondent’s Authorities, Tab 18**; Mullan, *supra* at 430-431, **Respondent’s Authorities, Tab 39**; Brown and Evans, *supra* at 3-7, 3-37, **Respondent’s Authorities, Tab 37**.

¹²⁶ *Khela*, *supra* at paras 47, 63, **Respondent’s Authorities, Tab 24**.

2. Availability of the Alternate Forum

84. The appellants argue that this alternate forum is not available to them all.¹²⁷ The Court of Appeal determined that the Federal Court's exercise of discretion in deferring the matter was not contingent on the existence of actual parallel proceedings as in the case of Roland Auer.¹²⁸ The relevant consideration is whether there is an alternate forum in which the *vires* challenge may be raised.

85. An adequate alternate forum is available for determining the *vires* issue in respect of all the child support payor appellants. While a stand-alone challenge would not be available, a challenge in the context of *Divorce Act* proceedings is an adequate available remedy. Like Roland Auer, Robert Strickland can challenge the *Guidelines* in the context of his ongoing *Divorce Act* proceedings in superior court. George Connon can equally access a direct, personal remedy by initiating divorce proceedings and arguing that the *Guidelines* should not apply to the determination of his child support obligations.

86. Although the appellant former spouse and children are not parties to Roland Auer's divorce proceedings, in practical terms, their interests in the *vires* challenge will be addressed in those proceedings. They allege that Roland Auer's current child support order has a negative financial impact on them.¹²⁹ If the superior court finds that the *Guidelines* are invalid and declines to apply them, the alleged negative impact may be remedied.

C. Conclusion

87. Superior courts must possess the jurisdiction to consider the *vires* of federal subordinate legislation on administrative law grounds in the context of proceedings over which Parliament has granted them authority, such as proceedings under the *Divorce Act*. Finding jurisdiction in the superior courts is consistent with the principles of access to justice and the rule of law.

¹²⁷ Appellants' factum, paras 132-134.

¹²⁸ Federal Court of Appeal Reasons at para 11, **Appellants' Record, Tab 2, p 35**.

¹²⁹ Federal Court's Reasons at para 8, **Appellants' Record, Tab 1, p 5**; Federal Court of Appeal's Reasons at paras 4-5, **Appellants' Record, Tab 2, p 33-34**; Affidavit of Iwona Auer-Grzesiak sworn April 16, 2012, **Appellants' Record, Tab 11, pp 71-73**; Affidavit of Mark Auer sworn April 11, 2012, **Appellants' Record, Tab 10, pp 68-69**; Affidavit of Roland Auer sworn May 28, 2012 at para 12, **Appellants' Record, Tab 12, p 77**.

88. The Federal Court reasonably exercised its discretion not to hear the judicial review application because the provincial superior court is better placed to consider the *vires* of the *Guidelines* based on (1) the expertise of superior courts in divorce and child support matters; (2) the potential implications for provincial law and practice; (3) the opportunity for a more complete adversarial debate; (4) the effectiveness of the available remedy; and (5) the sound administration of justice.

PART IV – COSTS

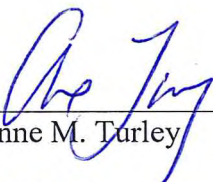
89. The respondent requests his costs of this appeal.

PART V – ORDER SOUGHT

90. The respondent requests that this appeal be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Ottawa, Ontario, this 8th day of December, 2014.



Anne M. Turley



Catherine A. Lawrence

Counsel for the respondent
Attorney General of Canada
Department of Justice, Canada

PART VI – TABLE OF AUTHORITIES

<u>Cases</u>	<u>Referred to at Paragraph</u>
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<i>Canadian Pacific Ltd v Matsqui Indian Band</i> , [1995] 1 SCR 3, [1995] SCJ No 1	56, 57, 58, 59, 62, 80, 82
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<i>KA et al v The City of Ottawa et al</i> (2006), 80 OR (3d) 161 (CA)	77
<i>Kourtessis v Canada (Minister of National Revenue – MNR)</i> , [1993] 2 SCR 53, [1993] SCJ No 45	80
<i>Les Messageries Publi-Maison Ltée c La Société canadiennes des postes</i> , [1996] RJQ 547, [1996] JQ no 428 (CA)	38
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<i>R v Cummins</i> (1997), 50 BCLR (3d) 262, [1997] BCJ No 2540 (SC)	38
<i>R v Davies</i> (1977), 14 Nfld & PEIR 1, [1977] NJ No 52 (NLCA)	34, 44
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<i>Williamson v Williamson</i> , 1976 CarswellNat 655, [1977] 1 ACWS 153 (FCTD)	10

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Christine Davies, <i>Family Law in Canada</i> , 4th ed (Toronto: Carswell Legal Publications, 1984)	4, 5, 6, 7
Denys C Holland and John P McGowan, <i>Delegated Legislation in Canada</i> (Toronto: Carswell, 1989)	39
David J Mullan, <i>The Discretionary Nature of Judicial Review</i> (2009), CIAJ 2009 Annual Conference: Taking Remedies Seriously	56, 57, 59, 80, 82
Julian D Payne, <i>The Law & Practice Relating to Divorce</i> , 2nd ed (Toronto: Carswell, 1964)	6
<u>Other</u>	
Canada, House of Commons Debates, 28 th Parliament, 3 rd Sess: Vol I (October 29, 1970) at 707 (Hon Turner)	8

PART VII – STATUTES RELIED ON

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<i>Divorce Act</i> , 1967-68, c. 24, ss 2, 5, 5(2)(b)	7
<i>Divorce Act</i> , RSC 1985, c 3 (2nd Supp), ss 3, 4, 5	9
<i>Divorce Act</i> , SC 1993, c 8, ss 1-5	9
<i>Divorce Act</i> , SC 2002, c 8, s 183(1)(i)	9
<i>Divorce Act</i> , RSC 1985, c 3, (2nd Supp), as am, ss 2(1), 2(5), 3(1), 3(3), 4(1), 4(3), 5(1), 5(3), 15.1(1) – (8), 26.1(1), 26.1(2)	11, 12, 19, 35, 65, 71
<i>Divorce Act (Ontario)</i> , 1930, SC 20-21 Geo V, c 14	5
<i>Federal Court Act</i> , RSC 1970 (2nd Supp), c 10, ss 3, 4, 17, 18, 65	8, 9
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<i>Matrimonial Causes Act</i> , 1857, 20 & 21 Vict, c 85	5
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<i>Federal Child Support Guidelines</i> , SOR/97-175, as am	1, 11, 13



CANADA

CONSOLIDATION

CODIFICATION

Bankruptcy and Insolvency Act

Loi sur la faillite et l'insolvabilité

R.S.C., 1985, c. B-3

L.R.C. (1985), ch. B-3

Current to October 27, 2014

À jour au 27 octobre 2014

Last amended on April 1, 2013

Dernière modification le 1 avril 2013

*Bankruptcy and Insolvency — October 27, 2014*Final statement
of receipts and
disbursements

(3) If an order is made under subsection (1), the trustee shall, without delay, prepare the final statements of receipts and disbursements referred to in section 151.

R.S., 1985, c. B-3, s. 181; 2004, c. 25, s. 86; 2005, c. 47, s. 109.

(3) Malgré l'annulation de la faillite, le syndic prépare sans délai l'état définitif des recettes et des débours visé à l'article 151.

L.R. (1985), ch. B-3, art. 181; 2004, ch. 25, art. 86; 2005, ch. 47, art. 109.

État définitif des
recettes et des
déboursStay on issue of
order

182. (1) An order of discharge or annulment shall be dated on the day on which it is made, but it shall not be issued or delivered until the expiration of the time allowed for an appeal, and, if an appeal is entered, not until the appeal has been finally disposed of.

(2) [Repealed, 1992, c. 27, s. 65]

R.S., 1985, c. B-3, s. 182; 1992, c. 27, s. 65.

182. (1) L'ordonnance de libération ou d'annulation porte la date à laquelle elle est rendue, mais ne peut être émise ou délivrée avant l'expiration du délai accordé pour un appel ni, si appel est interjeté, avant que l'appel ait été finalement jugé.

(2) [Abrogé, 1992, ch. 27, art. 65]

L.R. (1985), ch. B-3, art. 182; 1992, ch. 27, art. 65.

Suspension de
l'émission de
l'ordonnance

PART VII

COURTS AND PROCEDURE

JURISDICTION OF COURTS

Courts vested
with jurisdiction

183. (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice;

(b) [Repealed, 2001, c. 4, s. 33]

(c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;

(d) in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;

(e) in the Province of Prince Edward Island, the Trial Division of the Supreme Court of the Province;

(f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;

(g) in the Province of Newfoundland, the Trial Division of the Supreme Court; and

(h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

PARTIE VII

TRIBUNAUX ET PROCÉDURE

COMPÉTENCE DES TRIBUNAUX

183. (1) Les tribunaux suivants possèdent la compétence en droit et en equity qui doit leur permettre d'exercer la juridiction de première instance, auxiliaire et subordonnée en matière de faillite et en d'autres procédures autorisées par la présente loi durant leurs termes respectifs, tels que ces termes sont maintenant ou peuvent par la suite être tenus, pendant une vacance judiciaire et en chambre :

a) dans la province d'Ontario, la Cour supérieure de justice;

b) [Abrogé, 2001, ch. 4, art. 33]

c) dans les provinces de la Nouvelle-Écosse et de la Colombie-Britannique, la Cour suprême;

d) dans les provinces du Nouveau-Brunswick et d'Alberta, la Cour du Banc de la Reine;

e) dans la province de l'Île-du-Prince-Édouard, la Section de première instance de la Cour suprême;

f) dans les provinces du Manitoba et de la Saskatchewan, la Cour du Banc de la Reine;

g) dans la province de Terre-Neuve, la Division de première instance de la Cour suprême;

h) au Yukon, la Cour suprême du Yukon, dans les Territoires du Nord-Ouest, la Cour

Tribunaux
compétents

Faillite et insolvabilité — 27 octobre 2014

Superior Court jurisdiction in the Province of Quebec	(1.1) In the Province of Quebec, the Superior Court is invested with the jurisdiction that will enable it to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during its term, as it is now, or may be hereafter, held, and in vacation and in chambers.	suprême des Territoires du Nord-Ouest et, au Nunavut, la Cour de justice du Nunavut.	(1.1) Dans la province de Québec, la Cour supérieure possède la compétence pour exercer la juridiction de première instance, auxiliaire et subordonnée en matière de faillite et en d'autres procédures autorisées par la présente loi durant son terme, tel que celui-ci est maintenant ou peut par la suite être tenu, pendant une vacance judiciaire et en chambre.	Compétence de la Cour supérieure de la province de Québec
Courts of appeal — common law provinces	(2) Subject to subsection (2.1), the courts of appeal throughout Canada, within their respective jurisdictions, are invested with power and jurisdiction at law and in equity, according to their ordinary procedures, except as varied by this Act or the General Rules, to hear and determine appeals from the courts vested with original jurisdiction under this Act.	(2) Sous réserve du paragraphe (2.1), les cours d'appel du Canada, dans les limites de leur compétence respective, sont, en droit et en equity, conformément à leur procédure ordinaire, sauf divergences prévues par la présente loi ou par les Règles générales, investies de la compétence d'entendre et de juger les appels interjetés des tribunaux exerçant juridiction de première instance en vertu de la présente loi.	(2) Sous réserve du paragraphe (2.1), les cours d'appel du Canada, dans les limites de leur compétence respective, sont, en droit et en equity, conformément à leur procédure ordinaire, sauf divergences prévues par la présente loi ou par les Règles générales, investies de la compétence d'entendre et de juger les appels interjetés des tribunaux exerçant juridiction de première instance en vertu de la présente loi.	Cours d'appel — provinces de common law
Court of Appeal of the Province of Quebec	(2.1) In the Province of Quebec, the Court of Appeal, within its jurisdiction, is invested with power and jurisdiction, according to its ordinary procedures, except as varied by this Act or the General Rules, to hear and determine appeals from the Superior Court.	(2.1) Dans la province de Québec, la Cour d'appel, dans les limites de sa compétence, est, conformément à sa procédure ordinaire, sauf divergences prévues par la présente loi ou par les Règles générales, investie de la compétence d'entendre et de juger les appels interjetés de la Cour supérieure.	(2.1) Dans la province de Québec, la Cour d'appel, dans les limites de sa compétence, est, conformément à sa procédure ordinaire, sauf divergences prévues par la présente loi ou par les Règles générales, investie de la compétence d'entendre et de juger les appels interjetés de la Cour supérieure.	Cour d'appel de la province de Québec
Supreme Court of Canada	(3) The Supreme Court of Canada has jurisdiction to hear and to decide according to its ordinary procedure any appeal so permitted and to award costs. R.S., 1985, c. B-3, s. 183; R.S., 1985, c. 27 (2nd Supp.), s. 10; 1990, c. 17, s. 3; 1998, c. 30, s. 14; 1999, c. 3, s. 15; 2001, c. 4, s. 33; 2002, c. 7, s. 83.	(3) La Cour suprême du Canada a compétence pour entendre et décider, suivant sa procédure ordinaire, tout appel ainsi autorisé et pour adjuger les frais.	(3) La Cour suprême du Canada a compétence pour entendre et décider, suivant sa procédure ordinaire, tout appel ainsi autorisé et pour adjuger les frais.	Cour suprême du Canada
Appointment of officers	184. Each of the following persons, namely, (a) the Chief Justice of the court, (b) in Quebec, the Chief Justice or the Associate Chief Justice in the district to which the Chief Justice or Associate Chief Justice was appointed, (c) in Yukon, the Commissioner of Yukon, (d) in the Northwest Territories, the Commissioner of the Northwest Territories, and (e) in Nunavut, the Commissioner of Nunavut, shall appoint and assign such registrars, clerks and other officers in bankruptcy as deemed necessary for the transaction or disposal of matters in respect of which power or jurisdiction is	184. Chacune des personnes énumérées ci-dessous procède aux nominations et affectations de registraires, commis et autres fonctionnaires en matière de faillite qu'elle juge utiles pour l'expédition des questions au sujet desquelles la présente loi accorde compétence ou pouvoir, et peut spécifier ou restreindre la compétence territoriale de ces registraires, commis ou autres fonctionnaires : a) le juge en chef du tribunal; b) dans la province de Québec, le juge en chef ou le juge en chef adjoint du district pour lequel il a été nommé; c) au Yukon, le commissaire du Yukon; d) dans les Territoires du Nord-Ouest, le commissaire des Territoires du Nord-Ouest;	184. Chacune des personnes énumérées ci-dessous procède aux nominations et affectations de registraires, commis et autres fonctionnaires en matière de faillite qu'elle juge utiles pour l'expédition des questions au sujet desquelles la présente loi accorde compétence ou pouvoir, et peut spécifier ou restreindre la compétence territoriale de ces registraires, commis ou autres fonctionnaires : a) le juge en chef du tribunal; b) dans la province de Québec, le juge en chef ou le juge en chef adjoint du district pour lequel il a été nommé; c) au Yukon, le commissaire du Yukon; d) dans les Territoires du Nord-Ouest, le commissaire des Territoires du Nord-Ouest;	Nomination de registraires, etc.



CANADA

CONSOLIDATION

CODIFICATION

Competition Act

Loi sur la concurrence

R.S.C., 1985, c. C-34

L.R.C. (1985), ch. C-34

Current to October 27, 2014

À jour au 27 octobre 2014

Last amended on July 1, 2014

Dernière modification le 1 juillet 2014

Competition — October 27, 2014

things on the basis of which the injunction was issued.

Punishment for disobedience

(7) A court may punish any person who contravenes an injunction issued by it under subsection (1), (1.1) or (1.2) by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

(7) Le tribunal peut infliger l'amende qu'il estime indiquée ou un emprisonnement maximal de deux ans à quiconque contrevient à l'injonction qu'il a prononcée en vertu de l'un des paragraphes (1) à (1.2).

Peine pour transgression

Definition of "court"

(8) In this section, "court" means the Federal Court or a superior court of criminal jurisdiction as defined in the *Criminal Code*.

R.S., 1985, c. C-34, s. 33; 1993, c. 34, s. 50; 1999, c. 2, s. 10; 2002, c. 16, s. 5; 2010, c. 23, s. 73.

(8) Au présent article, « tribunal » s'entend de la Cour fédérale ou d'une cour supérieure de juridiction criminelle, au sens du *Code criminel*.

L.R. (1985), ch. C-34, art. 33; 1993, ch. 34, art. 50; 1999, ch. 2, art. 10; 2002, ch. 16, art. 5; 2010, ch. 23, art. 73.

Définition de « tribunal »

Prohibition orders

34. (1) Where a person has been convicted of an offence under Part VI, the court may, at the time of the conviction, on the application of the Attorney General of Canada or the attorney general of the province, in addition to any other penalty imposed on the person convicted, prohibit the continuation or repetition of the offence or prohibit the doing of any act or thing, by the person convicted or any other person, that is directed toward the continuation or repetition of the offence.

34. (1) Dès qu'une personne est déclarée coupable d'une infraction visée à la partie VI, le tribunal peut, à la demande du procureur général du Canada ou du procureur général de la province, en sus de toute autre peine infligée à cette personne, interdire la continuation ou la répétition de l'infraction ou l'accomplissement, par cette personne ou par toute autre personne, d'un acte qui tend à la continuation ou à la répétition de l'infraction.

Interdictions

Idem

(2) Where it appears to a superior court of criminal jurisdiction in proceedings commenced by information of the Attorney General of Canada or the attorney general of the province for the purposes of this section that a person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part VI, the court may prohibit the commission of the offence or the doing or continuation of any act or thing by that person or any other person constituting or directed toward the commission of the offence.

(2) Lorsqu'il apparaît à une cour supérieure de juridiction criminelle dans des procédures commencées au moyen d'une plainte du procureur général du Canada ou du procureur général de la province, pour l'application du présent article, qu'une personne a accompli, est sur le point d'accomplir ou accomplira vraisemblablement un acte ou une chose constituant une infraction visée à la partie VI, ou tendant à la perpétration d'une telle infraction, le tribunal peut interdire la perpétration de cette infraction ou l'accomplissement ou la continuation, par cette personne ou toute autre personne, d'un acte ou d'une chose constituant une telle infraction ou tendant à sa perpétration.

Idem

Prescriptive terms

(2.1) An order made under this section in relation to an offence may require any person

(a) to take such steps as the court considers necessary to prevent the commission, continuation or repetition of the offence; or

(b) to take any steps agreed to by that person and the Attorney General of Canada or the attorney general of the province.

(2.1) L'ordonnance rendue en vertu du présent article à l'égard d'une infraction peut enjoindre à une personne de prendre :

a) soit les mesures que le tribunal estime nécessaires pour empêcher la perpétration, la continuation ou la répétition de l'infraction;

b) soit toutes mesures convenues entre cette personne et le procureur général du Canada ou le procureur général de la province.

Injonction de faire

Concurrence — 27 octobre 2014

Duration of order	(2.2) An order made under this section applies for a period of ten years unless the court specifies a shorter period.	(2.2) L'ordonnance rendue en vertu du présent article s'applique pendant une période de dix ans ou la période plus courte fixée par le tribunal.	Durée d'application
Variation or rescission	(2.3) An order made under this section may be varied or rescinded in respect of any person to whom the order applies by the court that made the order (a) where the person and the Attorney General of Canada or the attorney general of the province consent to the variation or rescission; or (b) where the court, on the application of the person or the Attorney General of Canada or the attorney general of the province, finds that the circumstances that led to the making of the order have changed and, in the circumstances that exist at the time the application is made, the order would not have been made or would have been ineffective in achieving its intended purpose.	(2.3) Le tribunal peut annuler ou modifier l'ordonnance qu'il a rendue en vertu du présent article en ce qui concerne une personne à l'égard de laquelle elle a été rendue, dans les cas suivants : a) cette personne et le procureur général du Canada ou le procureur général de la province y consentent; b) il conclut, à la demande de cette personne, du procureur général du Canada ou du procureur général de la province, que les circonstances ayant entraîné l'ordonnance ont changé et que, sur le fondement des circonstances qui existent au moment où la demande est présentée, l'ordonnance n'aurait pas été rendue ou n'aurait pas eu les effets nécessaires à la réalisation de son objet.	Annulation ou modification
Other proceedings	(2.4) No proceedings may be commenced under Part VI against a person against whom an order is sought under subsection (2) on the basis of the same or substantially the same facts as are alleged in proceedings under that subsection.	(2.4) Il ne peut être intenté de poursuite en vertu de la partie VI contre une personne contre laquelle l'ordonnance prévue au paragraphe (2) est demandée, si les faits qui seraient allégués au soutien de la poursuite sont les mêmes ou essentiellement les mêmes que ceux qui ont fait l'objet de la demande.	Une seule poursuite
Appeals to courts of appeal and Federal Court	(3) The Attorney General of Canada or the attorney general of the province or any person against whom an order is made under this section may appeal against the order or a refusal to make an order or the quashing of an order (a) from a superior court of criminal jurisdiction in the province to the court of appeal of the province, or (b) from the Federal Court to the Federal Court of Appeal, as the case may be, on any ground that involves a question of law or, if leave to appeal is granted by the court appealed to within twenty-one days after the judgment appealed from is pronounced or within such extended time as the court appealed to or a judge thereof for special reasons allows, on any ground that appears to that court to be a sufficient ground of appeal.	(3) Le procureur général du Canada ou le procureur général de la province ou toute personne contre laquelle est rendue l'ordonnance prévue au présent article peut interjeter appel de l'ordonnance, du refus de rendre une ordonnance ou de l'annulation d'une ordonnance d'une cour supérieure de juridiction criminelle dans la province ou de la Cour fédérale, respectivement, à la cour d'appel de la province ou à la Cour d'appel fédérale pour tout motif comportant une question de droit ou, si l'autorisation d'appel est accordée par le tribunal auprès duquel l'appel est interjeté dans les vingt et un jours suivant le prononcé du jugement faisant l'objet de la demande d'autorisation d'appel ou dans le délai prolongé qu'accorde, pour des raisons spéciales, le tribunal auprès duquel l'appel est interjeté ou un juge de ce tribunal, pour tout motif d'appel jugé suffisant par ce tribunal.	Appels : cours d'appel et Cour d'appel fédérale
Appeals to Supreme Court of Canada	(3.1) The Attorney General of Canada or the attorney general of the province or any person against whom an order is made under this sec-	(3.1) Le procureur général du Canada ou le procureur général de la province ou toute personne contre laquelle est rendue l'ordonnance	Motifs d'appel à la Cour suprême

Concurrence — 27 octobre 2014

Notice	<p>72. (1) No record, report or statement of statistical information or statistics referred to in section 70 or 71 shall be received in evidence before the Tribunal or court unless the person intending to produce the record, report or statement in evidence has given to the person against whom it is intended to be produced reasonable notice together with a copy of the record, report or statement and, in the case of a record or report of statistics referred to in section 71, together with the names and qualifications of those persons who participated in the preparation thereof.</p>	<p>72. (1) Un document, un rapport ou un état statistique mentionnés aux articles 70 ou 71 ne sont admis en preuve devant le Tribunal ou un tribunal que si la personne qui entend les produire en preuve a donné à la personne à laquelle elle entend les opposer un préavis raisonnable ainsi qu'une copie du document, du rapport ou de l'état et, dans le cas d'un document ou d'un rapport statistique mentionné à l'article 71, communication des noms et qualités des personnes qui ont participé à leur préparation.</p>	Préavis
Attendance of statistician	<p>(2) Any person against whom a record or report of statistics referred to in section 70 is produced may require, for the purposes of cross-examination, the attendance of any person under whose supervision the record or report was prepared.</p>	<p>(2) Toute personne à qui on oppose une pièce ou rapport statistiques mentionnés à l'article 70 peut exiger la présence, pour contre-interrogatoire, de toute personne qui a dirigé leur préparation.</p>	Présence du statisticien
Idem	<p>(3) Any person against whom a record or report of statistics referred to in section 71 is produced may require, for the purposes of cross-examination, the attendance of any person who participated in the preparation of the record or report.</p> <p>R.S., 1985, c. C-34, s. 72; R.S., 1985, c. 19 (2nd Supp.), s. 43.</p>	<p>(3) Toute personne à qui on oppose une pièce ou rapport statistiques mentionnés à l'article 71 peut exiger la présence, pour contre-interrogatoire, de toute personne qui a participé à leur préparation.</p> <p>L.R. (1985), ch. C-34, art. 72; L.R. (1985), ch. 19 (2^e suppl.), art. 43.</p>	Idem
Jurisdiction of Federal Court	<p>73. (1) Subject to this section, the Attorney General of Canada may institute and conduct any prosecution or other proceedings under section 34, any of sections 45 to 49 or, if the proceedings are on indictment, under section 52, 52.1, 53, 55, 55.1 or 66, in the Federal Court, and for the purposes of the prosecution or other proceedings, the Federal Court has all the powers and jurisdiction of a superior court of criminal jurisdiction under the <i>Criminal Code</i> and under this Act.</p>	<p>73. (1) Sous réserve des autres dispositions du présent article, le procureur général du Canada peut entamer et diriger toutes poursuites ou autres procédures prévues par l'article 34, par l'un des articles 45 à 49 ou, lorsqu'il s'agit de procédures par mise en accusation, par les articles 52, 52.1, 53, 55, 55.1 ou 66, devant la Cour fédérale; à l'égard de telles poursuites ou autres procédures, la Cour fédérale possède tous les pouvoirs et la compétence d'une cour supérieure de juridiction criminelle sous le régime du <i>Code criminel</i> et de la présente loi.</p>	Compétence de la Cour fédérale
No jury	<p>(2) The trial of an offence under Part VI or section 66 in the Federal Court shall be without a jury.</p>	<p>(2) Le procès concernant une infraction visée à la partie VI ou à l'article 66, en la Cour fédérale, a lieu sans jury.</p>	Absence de jury
Appeal	<p>(3) An appeal lies from the Federal Court to the Federal Court of Appeal and from the Federal Court of Appeal to the Supreme Court of Canada in any prosecution or proceedings under Part VI or section 66 of this Act as provided in Part XXI of the <i>Criminal Code</i> for appeals from a trial court and from a court of appeal.</p>	<p>(3) Un appel peut être interjeté de la Cour fédérale à la Cour d'appel fédérale et de la Cour d'appel fédérale à la Cour suprême du Canada dans toutes poursuites ou procédures visées à la partie VI ou à l'article 66 de la présente loi, conformément à la partie XXI du <i>Code criminel</i> pour les appels d'un tribunal de première instance et d'une cour d'appel.</p>	Appel

Competition — October 27, 2014

Proceedings
optional

(4) Proceedings under subsection 34(2) may in the discretion of the Attorney General of Canada be instituted in either the Federal Court or a superior court of criminal jurisdiction in the province but no prosecution shall be instituted against an individual in the Federal Court in respect of an offence under Part VI or section 66 without the consent of the individual.

R.S., 1985, c. C-34, s. 73; 1999, c. 2, s. 21; 2002, c. 8, ss. 183, 198, c. 16, s. 8; 2009, c. 2, s. 421.

74. [Repealed, 1999, c. 2, s. 22]

PART VII.1

DECEPTIVE MARKETING PRACTICES

REVIEWABLE MATTERS

Misrepresenta-
tions to public

74.01 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

(a) makes a representation to the public that is false or misleading in a material respect;

(b) makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation; or

(c) makes a representation to the public in a form that purports to be

(i) a warranty or guarantee of a product, or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if the form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out.

Ordinary price:
suppliers
generally

(2) Subject to subsection (3), a person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the

Procédures
facultatives

(4) Des procédures engagées aux termes du paragraphe 34(2) peuvent, à la discrétion du procureur général du Canada, être intentées soit devant la Cour fédérale, soit devant une cour supérieure de juridiction criminelle dans la province, mais aucune poursuite ne peut être intentée contre un particulier devant la Cour fédérale à l'égard d'une infraction visée à la partie VI ou à l'article 66 sans le consentement de ce particulier.

L.R. (1985), ch. C-34, art. 73; 1999, ch. 2, art. 21; 2002, ch. 8, art. 183 et 198, ch. 16, art. 8; 2009, ch. 2, art. 421.

74. [Abrogé, 1999, ch. 2, art. 22]

PARTIE VII.1

PRATIQUES COMMERCIALES
TROMPEUSES

COMPORTEMENT SUSCEPTIBLE D'EXAMEN

Indications
trompeuses

74.01 (1) Est susceptible d'examen le comportement de quiconque donne au public, de quelque manière que ce soit, aux fins de promouvoir directement ou indirectement soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques :

a) ou bien des indications fausses ou trompeuses sur un point important;

b) ou bien, sous la forme d'une déclaration ou d'une garantie visant le rendement, l'efficacité ou la durée utile d'un produit, des indications qui ne se fondent pas sur une épreuve suffisante et appropriée, dont la preuve incombe à la personne qui donne les indications;

c) ou bien des indications sous une forme qui fait croire qu'il s'agit :

(i) soit d'une garantie de produit,

(ii) soit d'une promesse de remplacer, entretenir ou réparer tout ou partie d'un article ou de fournir de nouveau ou continuer à fournir un service jusqu'à l'obtention du résultat spécifié,

si cette forme de prétendue garantie ou promesse est trompeuse d'une façon importante ou s'il n'y a aucun espoir raisonnable qu'elle sera respectée.

(2) Sous réserve du paragraphe (3), est susceptible d'examen le comportement de quiconque donne, de quelque manière que ce soit,

Prix habituel :
fournisseurs en
général

CONSTITUTION ACT, 1867

30 & 31 Victoria, c. 3 (U.K.)

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith

VI. DISTRIBUTION OF LEGISLATIVE POWERS**POWERS OF THE PARLIAMENT**

Legislative Authority of Parliament of Canada

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1. Repealed. (44)
- 1A. The Public Debt and Property. (45)
2. The Regulation of Trade and Commerce.
 - 2A. Unemployment insurance. (46)
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other

**LOI CONSTITUTIONNELLE DE
1867**

30 & 31 Victoria, ch. 3 (R.U.)

Loi concernant l'Union et le gouvernement du Canada, de la Nouvelle-Écosse et du Nouveau-Brunswick, ainsi que les objets qui s'y rattachent

**VI. DISTRIBUTION DES POUVOIRS
LÉGISLATIFS****POUVOIRS DU PARLEMENT**

Autorité législative du parlement du Canada

91. Il sera loisible à la Reine, de l'avis et du consentement du Sénat et de la Chambre des Communes, de faire des lois pour la paix, l'ordre et le bon gouvernement du Canada, relativement à toutes les matières ne tombant pas dans les catégories de sujets par la présente loi exclusivement assignés aux législatures des provinces; mais, pour plus de garantie, sans toutefois restreindre la généralité des termes ci-haut employés dans le présent article, il est par la présente déclaré que (nonobstant toute disposition contraire énoncée dans la présente loi) l'autorité législative exclusive du parlement du Canada s'étend à toutes les matières tombant dans les catégories de sujets ci-dessous énumérés, savoir :

1. Abrogé. (44)
- 1A. La dette et la propriété publiques. (45)
2. La réglementation du trafic et du commerce.
 - 2A. L'assurance-chômage. (46)
3. Le prélèvement de deniers par tous modes ou systèmes de taxation.
4. L'emprunt de deniers sur le crédit public.
5. Le service postal.
6. Le recensement et les statistiques.
7. La milice, le service militaire et le service

<p>Officers of the Government of Canada.</p> <p>9. Beacons, Buoys, Lighthouses, and Sable Island.</p> <p>10. Navigation and Shipping.</p> <p>11. Quarantine and the Establishment and Maintenance of Marine Hospitals.</p> <p>12. Sea Coast and Inland Fisheries.</p> <p>13. Ferries between a Province and any British or Foreign Country or between Two Provinces.</p> <p>14. Currency and Coinage.</p> <p>15. Banking, Incorporation of Banks, and the Issue of Paper Money.</p> <p>16. Savings Banks.</p> <p>17. Weights and Measures.</p> <p>18. Bills of Exchange and Promissory Notes.</p> <p>19. Interest.</p> <p>20. Legal Tender.</p> <p>21. Bankruptcy and Insolvency.</p> <p>22. Patents of Invention and Discovery.</p> <p>23. Copyrights.</p> <p>24. Indians, and Lands reserved for the Indians.</p> <p>25. Naturalization and Aliens.</p> <p>26. Marriage and Divorce.</p> <p>27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.</p> <p>28. The Establishment, Maintenance, and Management of Penitentiaries.</p> <p>29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the</p>	<p>naval, et la défense du pays.</p> <p>8. La fixation et le paiement des salaires et honoraires des officiers civils et autres du gouvernement du Canada.</p> <p>9. Les amarques, les bouées, les phares et l'île de Sable.</p> <p>10. La navigation et les bâtiments ou navires (<i>shipping</i>).</p> <p>11. La quarantaine et l'établissement et maintien des hôpitaux de marine.</p> <p>12. Les pêcheries des côtes de la mer et de l'intérieur.</p> <p>13. Les passages d'eau (<i>ferries</i>) entre une province et tout pays britannique ou étranger, ou entre deux provinces.</p> <p>14. Le cours monétaire et le monnayage.</p> <p>15. Les banques, l'incorporation des banques et l'émission du papier-monnaie.</p> <p>16. Les caisses d'épargne.</p> <p>17. Les poids et mesures.</p> <p>18. Les lettres de change et les billets promissoires.</p> <p>19. L'intérêt de l'argent.</p> <p>20. Les offres légales.</p> <p>21. La banqueroute et la faillite.</p> <p>22. Les brevets d'invention et de découverte.</p> <p>23. Les droits d'auteur.</p> <p>24. Les Indiens et les terres réservées pour les Indiens.</p> <p>25. La naturalisation et les aubains.</p> <p>26. Le mariage et le divorce.</p> <p>27. La loi criminelle, sauf la constitution des tribunaux de juridiction criminelle, mais y compris la procédure en matière criminelle.</p>
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<p>Provinces.</p> <p>And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces. <u>(47)</u></p>	<p>28. L'établissement, le maintien, et l'administration des pénitenciers.</p> <p>29. Les catégories de sujets expressément exceptés dans l'énumération des catégories de sujets exclusivement assignés par la présente loi aux législatures des provinces.</p> <p>Et aucune des matières énoncées dans les catégories de sujets énumérés dans le présent article ne sera réputée tomber dans la catégorie des matières d'une nature locale ou privée comprises dans l'énumération des catégories de sujets exclusivement assignés par la présente loi aux législatures des provinces. <u>(47)</u></p>
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CANADA

CONSOLIDATION

CODIFICATION

Customs Act

Loi sur les douanes

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

S.R.C. 1985, ch. 1 (2^e suppl.)

NOTE

[1986, c. 1, assented to 13th February, 1986]

NOTE

[1986, ch. 1, sanctionné le 13 février 1986]

Current to November 11, 2014

À jour au 11 novembre 2014

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Douanes — 11 novembre 2014

	the applicant is a mortgagee, hypothecary creditor or lien-holder, the applicant exercised that care in relation to the mortgagor, hypothecary debtor or lien-giver.	débiteur dans le cas d'une hypothèque ou d'un privilège.	
	R.S., 1985, c. 1 (2nd Supp.), s. 139; 2001, c. 25, s. 75.	L.R. (1985), ch. 1 (2 ^e suppl.), art. 139; 2001, ch. 25, art. 75.	
Order	139.1 (1) A person who makes an application under section 138 may, within ninety days after being notified of the decision, apply for an order under this section by giving notice in writing to the court.	139.1 (1) L'auteur de la demande présentée en vertu de l'article 138 peut, dans les quatre-vingt-dix jours suivant celui où il est informé de la décision, présenter au tribunal une requête lui demandant de rendre l'ordonnance prévue au présent article.	Appel
Meaning of "court"	(2) In this section, "court" means (a) in the Province of Ontario, the Superior Court of Justice; (b) in the Province of Quebec, the Superior Court; (c) in the Provinces of Nova Scotia and British Columbia, Yukon and the Northwest Territories, the Supreme Court; (d) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench; (e) in the Provinces of Prince Edward Island and Newfoundland, the Trial Division of the Supreme Court; and (f) in Nunavut, the Nunavut Court of Justice.	(2) Dans le présent article, « tribunal » s'entend : a) dans la province d'Ontario, de la Cour supérieure de justice; b) dans la province de Québec, de la Cour supérieure; c) dans les provinces de la Nouvelle-Écosse et de la Colombie-Britannique, au Yukon et dans les Territoires du Nord-Ouest, de la Cour suprême; d) dans les provinces du Nouveau-Brunswick, du Manitoba, de la Saskatchewan et de l'Alberta, de la Cour du Banc de la Reine; e) dans les provinces de l'Île-du-Prince-Édouard et de Terre-Neuve, de la Section de première instance de la Cour suprême; f) au Nunavut, de la Cour de justice du Nunavut.	Définition de « tribunal »
Date of hearing	(3) A judge of the court must fix a day, not less than thirty days after the application has been made, for the hearing of the application.	(3) Le juge du tribunal saisi de la requête fixe l'audition de celle-ci à une date postérieure d'au moins trente jours à celle de sa présentation.	Date d'audition
Notice to Minister	(4) The applicant, no later than fifteen days before the day fixed for the hearing, must serve notice of the application and of the hearing on the Minister, or an officer designated by the Minister for the purposes of this section.	(4) Au plus tard le quinzième jour précédant la date d'audition de la requête, le requérant signifie au ministre, ou à l'agent que celui-ci désigne pour l'application du présent article, un avis de la requête et de l'audition.	Signification au ministre
Service by registered mail	(5) Service of the notice is sufficient if it is sent by registered mail addressed to the Minister.	(5) Il suffit, pour que l'avis soit réputé signifié, de l'envoyer par courrier recommandé au ministre.	Courrier recommandé
Order	(6) The applicant is entitled to an order declaring that the applicant's interest is not affected by the seizure or detention and declaring the nature and extent of the applicant's interest at the time of the contravention or use if, on the	(6) Lors de l'audition de la requête, le requérant est fondé à obtenir une ordonnance disposant que la saisie ou la détention ne porte pas atteinte à son droit et précisant la nature et l'étendue de celui-ci au moment de l'infraction	Ordonnance

16 ELIZABETH II

CHAP. 24

An Act respecting Divorce

[Assented to 1st February, 1968]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

1. This Act may be cited as the *Divorce Act*. Short title

INTERPRETATION

2. In this Act,
- | | | |
|-----|---|----------------------------|
| (a) | “child” of a husband and wife includes any person to whom the husband and wife stand <i>in loco parentis</i> and any person of whom either of the husband or the wife is a parent and to whom the other of them stands <i>in loco parentis</i> ; | Definitions
“Child” |
| (b) | “children of the marriage” means each child of a husband and wife who at the material time is | “Children of the marriage” |
| | (i) under the age of sixteen years, or | |
| | (ii) sixteen years of age or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw himself from their charge or to provide himself with necessaries of life; | |
| (c) | “collusion” means an agreement or conspiracy to which a petitioner is either directly or indirectly a party for the purpose of subverting the administration of justice, and includes any agreement, understanding or arrangement to fabricate or suppress evidence or to deceive the court, but does not include an agreement to the | “Collusion” |

extent that it provides for separation between the parties, financial support, division of property interests or the custody, care or upbringing of children of the marriage;

“Condonation”

- (d) “condonation” does not include the continuation or resumption of cohabitation during any single period of not more than ninety days, where such cohabitation is continued or resumed with reconciliation as its primary purpose;

Court”

- (e) “court” for any province means,
- (i) for the Province of Ontario, Nova Scotia, New Brunswick or Alberta, the trial division or branch of the Supreme Court of the Province,
 - (ii) for the Province of Quebec,
 - (A) where no proclamation has been issued under subsection (1) of section 22, the Divorce Division of the Exchequer Court, or
 - (B) where a proclamation has been issued under subsection (1) of section 22, the Superior Court of the Province,
 - (iii) for the Province of Newfoundland,
 - (A) where no proclamation has been issued under subsection (2) of section 22, the Divorce Division of the Exchequer Court, or
 - (B) where a proclamation has been issued under subsection (2) of section 22, the Supreme Court of the Province,
 - (iv) for the Province of British Columbia or Prince Edward Island, the Supreme Court of the Province,
 - (v) for the Province of Manitoba or Saskatchewan, the Court of Queen’s Bench for the Province, and
 - (vi) for the Yukon Territory or the Northwest Territories, the Territorial Court thereof;

“Court of appeal”

- (f) “court of appeal” means
- (i) with respect to an appeal from a court other than the Divorce Division of the Exchequer Court, the court exercising general appellate jurisdiction with respect to appeals from that court, and
 - (ii) with respect to an appeal from the Divorce Division of the Exchequer Court, the Exchequer Court of Canada; and

- (g) "petition" for divorce means a petition or "Petition" motion for a decree of divorce, either with or without corollary relief by way of an order under section 10 or 11.

GROUNDS FOR DIVORCE

3. Subject to section 5, a petition for divorce may be presented to a court by a husband or wife, on the ground that the respondent, since the celebration of the marriage,

- Grounds
- (a) has committed adultery;
 - (b) has been guilty of sodomy, bestiality or rape, or has engaged in a homosexual act;
 - (c) has gone through a form of marriage with another person; or
 - (d) has treated the petitioner with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.

4. (1) In addition to the grounds specified in section 3, and subject to section 5, a petition for divorce may be presented to a court by a husband or wife where the husband and wife are living separate and apart, on the ground that there has been a permanent breakdown of their marriage by reason of one or more of the following circumstances as specified in the petition, namely:

- Additional grounds
- (a) the respondent
 - (i) has been imprisoned, pursuant to his conviction for one or more offences, for a period or an aggregate period of not less than three years during the five year period immediately preceding the presentation of the petition, or
 - (ii) has been imprisoned for a period of not less than two years immediately preceding the presentation of the petition pursuant to his conviction for an offence for which he was sentenced to death or to imprisonment for a term of ten years or more, against which conviction or sentence all rights of the respondent to appeal to a court having jurisdiction to hear such an appeal have been exhausted;
 - (b) the respondent has, for a period of not less than three years immediately preceding the presentation of the petition, been grossly addicted to alcohol, or a narcotic as defined in the *Narcotic Control Act*, and there is no reasonable

- expectation of the respondent's rehabilitation within a reasonably foreseeable period;
- (c) the petitioner, for a period of not less than three years immediately preceding the presentation of the petition, has had no knowledge of or information as to the whereabouts of the respondent and, throughout that period, has been unable to locate the respondent;
 - (d) the marriage has not been consummated and the respondent, for a period of not less than one year, has been unable by reason of illness or disability to consummate the marriage, or has refused to consummate it; or
 - (e) the spouses have been living separate and apart
 - (i) for any reason other than that described in subparagraph (ii), for a period of not less than three years, or
 - (ii) by reason of the petitioner's desertion of the respondent, for a period of not less than five years,
 immediately preceding the presentation of the petition.

Where
circum-
stances
established

(2) On any petition presented under this section, where the existence of any of the circumstances described in subsection (1) has been established, a permanent breakdown of the marriage by reason of those circumstances shall be deemed to have been established.

JURISDICTION OF COURT

Jurisdiction
to entertain
petition

5. (1) The court for any province has jurisdiction to entertain a petition for divorce and to grant relief in respect thereof if,

- (a) the petition is presented by a person domiciled in Canada; and
- (b) either the petitioner or the respondent has been ordinarily resident in that province for a period of at least one year immediately preceding the presentation of the petition and has actually resided in that province for at least ten months of that period.

Where
petition
pending
before
two
courts

(2) Where petitions for divorce are pending between a husband and wife before each of two courts that would otherwise have jurisdiction under this Act respectively to entertain them and to grant relief in respect thereof,

- (a) if the petitions were presented on different days and the petition that was presented first is not discontinued within thirty days after the day it was presented, the court to which a petition

was first presented has exclusive jurisdiction to grant relief between the parties and the other petition shall be deemed to be discontinued; and

- (b) if the petitions were presented on the same day and neither of them is discontinued within thirty days after that day, the Divorce Division of the Exchequer Court has exclusive jurisdiction to grant relief between the parties and the petition or petitions pending before the other court or courts shall be removed, by direction of the Divorce Division of the Exchequer Court, into that Court for adjudication.

(3) Where a husband or wife opposes a petition for divorce, the court may grant to such spouse the relief that might have been granted to him or to her if he or she had presented a petition to the court seeking that relief and the court had had jurisdiction to entertain the petition under this Act.

Where
petition
opposed

DOMICILE

6. (1) For all purposes of establishing the jurisdiction of a court to grant a decree of divorce under this Act, the domicile of a married woman shall be determined as if she were unmarried and, if she is a minor, as if she had attained her majority.

Rule for
determining
domicile

(2) For all purposes of determining the marital status in Canada of any person and without limiting or restricting any existing rule of law applicable to the recognition of decrees of divorce granted otherwise than under this Act, recognition shall be given to a decree of divorce, granted after the coming into force of this Act under a law of a country or subdivision of a country other than Canada by a tribunal or other competent authority that had jurisdiction under that law to grant the decree, on the basis of the domicile of the wife in that country or subdivision determined as if she were unmarried and, if she was a minor, as if she had attained her majority.

Recognition
of foreign
decrees
based on
wife's
domicile

PRESENTATION AND HEARING OF PETITIONS: SPECIAL DUTIES

7. (1) It shall be the duty of every barrister, solicitor, lawyer or advocate who undertakes to act on behalf of a petitioner or a respondent on a petition for divorce under this Act, except where the circumstances of the case are of such a nature that it would clearly not be appropriate to do so,

Duty of
legal
adviser
respecting
possibility
of reconcil-
iation

- (a) to draw to the attention of his client those provisions of this Act that have as their object



CHAPTER 3 (2nd Supp.)

CHAPITRE 3 (2^e suppl.)

An Act respecting divorce and corollary relief

Loi concernant le divorce et les mesures
accessaires[1986, c. 4, assented to
13th February, 1986][1986, ch. 4, sanctionné le
13 février 1986]

SHORT TITLE

TITRE ABRÉGÉ

Short title

1. This Act may be cited as the *Divorce Act*.1. *Loi sur le divorce*.

Titre abrégé

INTERPRETATION

DÉFINITIONS

Definitions

"appellate
court"
«*cour d'appel*»"child of the
marriage"
«*enfant à
charge*»"corollary relief
proceeding"
«*action en
mesures
accessaires*»"court"
«*tribunal*»

2. (1) In this Act,

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

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

(a) is under the age of sixteen years, or

(b) is sixteen years of age 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;

"corollary relief proceeding" means a proceeding in a court in which either or both former spouses seek a support order or a custody order or both such orders;

"court", in respect of a province, means

(a) for the Province of Ontario, Nova Scotia or Newfoundland, the trial division or branch of the Supreme Court of the Province,

(b) for the Province of Quebec, the Superior Court,

(c) for the Province of British Columbia or Prince Edward Island, the Supreme Court of the Province,

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

«accès» Comporte le droit de visite.

«action en divorce» Action exercée devant un tribunal par l'un des époux ou conjointement par eux en vue d'obtenir un divorce assorti ou non d'une ordonnance alimentaire ou d'une ordonnance de garde, ou des deux.

«action en mesures accessaires» Action exercée devant un tribunal par l'un des ex-époux ou conjointement par eux en vue d'obtenir une ordonnance alimentaire ou une ordonnance de garde, ou les deux.

«action en modification» Action exercée devant un tribunal par l'un des ex-époux ou conjointement par eux en vue d'obtenir une ordonnance modificative.

«cour d'appel» Tribunal compétent pour connaître des appels formés contre les décisions d'un autre tribunal.

«enfant à charge» Enfant des deux époux ou ex-époux qui, à l'époque considérée, se trouve dans une des situations suivantes :

a) il a moins de seize ans;

b) il a au moins seize ans et est à leur charge, sans pouvoir, pour cause de mala-

Définitions

«accès»
*French version
only*«action en
divorce»
"divorce
proceeding"«action en
mesures
accessaires»
"corollary
relief proceed-
ing"«action en
modification»
"variation
proceeding"«cour d'appel»
"appellate
court"«enfant à
charge»
"child of the
marriage"

the rules regulating the practice and procedure in that court.

JURISDICTION

Jurisdiction in divorce proceedings

3. (1) A court in a province has jurisdiction to hear and determine a divorce proceeding if either spouse has been ordinarily resident in the province for at least one year immediately preceding the commencement of the proceeding.

Jurisdiction where two proceedings commenced on different days

(2) Where divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days and the proceeding that was commenced first is not discontinued within thirty days after it was commenced, the court in which a divorce proceeding was commenced first has exclusive jurisdiction to hear and determine any divorce proceeding then pending between the spouses and the second divorce proceeding shall be deemed to be discontinued.

Jurisdiction where two proceedings commenced on same day

(3) Where divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day and neither proceeding is discontinued within thirty days after it was commenced, the Federal Court—Trial Division has exclusive jurisdiction to hear and determine any divorce proceeding then pending between the spouses and the divorce proceedings in those courts shall be transferred to the Federal Court—Trial Division on the direction of that Court.

Jurisdiction in corollary relief proceedings

4. A court has jurisdiction to hear and determine a corollary relief proceeding if the court has granted a divorce to either or both former spouses.

Jurisdiction in variation proceedings

5. (1) A court in a province has jurisdiction to hear and determine a variation proceeding if

(a) either former spouse is ordinarily resident in the province at the commencement of the proceeding; or

(b) both former spouses accept the jurisdiction of the court.

Jurisdiction where two proceedings commenced on different days

(2) Where variation proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days and

COMPÉTENCE

3. (1) Dans le cas d'une action en divorce, a compétence pour instruire l'affaire et en décider le tribunal de la province où l'un des époux a résidé habituellement pendant au moins l'année précédant l'introduction de l'instance.

Compétence dans le cas d'un divorce

(2) Lorsque des actions en divorce entre les mêmes époux sont en cours devant deux tribunaux qui auraient par ailleurs compétence en vertu du paragraphe (1), que les instances ont été introduites à des dates différentes et que l'action engagée la première n'est pas abandonnée dans les trente jours suivant la date d'introduction de l'instance, le tribunal saisi en premier a compétence exclusive pour instruire l'affaire et en décider, la seconde action étant considérée comme abandonnée.

Instances introduites devant deux tribunaux à des dates différentes

(3) Lorsque des actions en divorce entre les mêmes époux sont en cours devant deux tribunaux qui auraient par ailleurs compétence en vertu du paragraphe (1), que les instances ont été introduites à la même date et qu'aucune des actions n'est abandonnée dans les trente jours suivant la date d'introduction de l'instance, la Section de première instance de la Cour fédérale a compétence exclusive pour instruire ces affaires et en décider, les actions étant renvoyées à cette section sur son ordre.

Instances introduites devant deux tribunaux à la même date

4. Dans le cas d'une action en mesures accessoires, a compétence pour instruire l'affaire et en décider le tribunal qui a accordé le divorce à l'un des ex-époux ou aux deux.

Compétence dans le cas des mesures accessoires

5. (1) Dans le cas d'une action en modification, a compétence pour instruire l'affaire et en décider :

Compétence dans le cas d'une action en modification

- a) soit le tribunal de la province où l'un des ex-époux réside habituellement à la date d'introduction de l'instance;
- b) soit celui dont la compétence est reconnue par les deux ex-époux.

(2) Lorsque des actions en modification entre les mêmes ex-époux concernant le même point sont en cours devant deux tribunaux qui auraient par ailleurs compétence en vertu du paragraphe (1), que les instances ont été intro-

Instances introduites devant deux tribunaux à des dates différentes

the proceeding that was commenced first is not discontinued within thirty days after it was commenced, the court in which a variation proceeding was commenced first has exclusive jurisdiction to hear and determine any variation proceeding then pending between the former spouses in respect of that matter and the second variation proceeding shall be deemed to be discontinued.

Jurisdiction where two proceedings commenced on same day

(3) Where variation proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day and neither proceeding is discontinued within thirty days after it was commenced, the Federal Court—Trial Division has exclusive jurisdiction to hear and determine any variation proceeding then pending between the former spouses in respect of that matter and the variation proceedings in those courts shall be transferred to the Federal Court—Trial Division on the direction of that Court.

Transfer of divorce proceeding where custody application

6. (1) Where an application for an order under section 16 is made in a divorce proceeding to a court in a province and is opposed and the child of the marriage in respect of whom the order is sought is most substantially connected with another province, the court may, on application by a spouse or on its own motion, transfer the divorce proceeding to a court in that other province.

Transfer of corollary relief proceeding where custody application

(2) Where an application for an order under section 16 is made in a corollary relief proceeding to a court in a province and is opposed and the child of the marriage in respect of whom the order is sought is most substantially connected with another province, the court may, on application by a former spouse or on its own motion, transfer the corollary relief proceeding to a court in that other province.

Transfer of variation proceeding where custody application

(3) Where an application for a variation order in respect of a custody order is made in a variation proceeding to a court in a province and is opposed and the child of the marriage in respect of whom the variation order is sought is most substantially connected with another province, the court may, on application by a former spouse or on its own motion, transfer the variation proceeding to a court in that other province.

duites à des dates différentes et que l'action engagée la première n'est pas abandonnée dans les trente jours suivant la date d'introduction de l'instance, le tribunal saisi en premier a compétence exclusive pour instruire l'affaire et en décider, la seconde action étant considérée comme abandonnée.

(3) Lorsque des actions en modification entre les mêmes ex-époux concernant le même point sont en cours devant deux tribunaux qui auraient par ailleurs compétence en vertu du paragraphe (1), que les instances ont été introduites à la même date et qu'aucune des actions n'est abandonnée dans les trente jours suivant la date d'introduction de l'instance, la Section de première instance de la Cour fédérale a compétence exclusive pour instruire ces affaires et en décider, les actions étant renvoyées à cette section sur son ordre.

Instances introduites devant deux tribunaux à la même date

6. (1) Le tribunal d'une province saisi de la demande d'ordonnance visée à l'article 16 dans le cadre d'une action en divorce peut, sur demande d'un époux ou d'office, renvoyer l'affaire au tribunal d'une autre province dans le cas où la demande est contestée et où l'enfant à charge concerné par l'ordonnance a ses principales attaches dans cette province.

Renvoi de l'action en divorce dans le cas d'une demande de garde

(2) Le tribunal d'une province saisi de la demande d'ordonnance visée à l'article 16 dans le cadre d'une action en mesures accessoires peut, sur demande d'un ex-époux ou d'office, renvoyer l'affaire au tribunal d'une autre province dans le cas où la demande est contestée et où l'enfant à charge concerné par l'ordonnance a ses principales attaches dans cette province.

Renvoi de l'action en mesures accessoires dans le cas d'une demande de garde

(3) Le tribunal d'une province saisi d'une demande d'ordonnance modificative concernant une ordonnance de garde peut, sur demande d'un ex-époux ou d'office, renvoyer l'affaire au tribunal d'une autre province dans le cas où la demande est contestée et où l'enfant à charge concerné par l'ordonnance modificative a ses principales attaches dans cette province.

Renvoi de l'action en modification dans le cas d'une demande de garde

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CHAPTER 8

CHAPITRE 8

An Act to amend the Divorce Act and the Family Orders and Agreements Enforcement Assistance Act

Loi modifiant la Loi sur le divorce et la Loi d'aide à l'exécution des ordonnances et des ententes familiales

[Assented to 25th March, 1993]

[Sanctionnée le 25 mars 1993]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

R.S., c. 3 (2nd Supp.); R.S., c. 27 (2nd Supp.); 1990, c. 18

DIVORCE ACT

LOI SUR LE DIVORCE

L.R., ch. 3 (2^e suppl.); L.R., ch. 27 (2^e suppl.); 1990, ch. 18

1. Section 4 of the *Divorce Act* is repealed and the following substituted therefor:

1. L'article 4 de la *Loi sur le divorce* est abrogé et remplacé par ce qui suit :

Jurisdiction in corollary relief proceedings

4. (1) A court in a province has jurisdiction to hear and determine a corollary relief proceeding if

4. (1) Dans le cas d'une action en mesures accessoires, a compétence pour instruire l'affaire et en décider :

Compétence dans le cas des mesures accessoires

(a) either former spouse is ordinarily resident in the province at the commencement of the proceeding; or

a) soit le tribunal de la province où l'un des ex-époux réside habituellement à la date de l'introduction de l'instance;

(b) both former spouses accept the jurisdiction of the court.

b) soit celui dont la compétence est reconnue par les deux ex-époux.

Jurisdiction where two proceedings commenced on different days

(2) Where corollary relief proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days and the proceeding that was commenced first is not discontinued within thirty days after it was commenced, the court in which a corollary relief proceeding was commenced first has exclusive jurisdiction to hear and determine any corollary relief proceeding then pending between the former spouses in respect of that matter and

(2) Lorsque des actions en mesures accessoires entre les mêmes ex-époux concernant le même point sont en cours devant deux tribunaux qui auraient par ailleurs compétence en vertu du paragraphe (1), que les instances ont été introduites à des dates différentes et que l'action engagée la première n'est pas abandonnée dans les trente jours suivant la date d'introduction de l'instance, le tribunal saisi en premier a compétence exclusive pour instruire l'affaire et en décider, la seconde action étant considérée comme abandonnée.

Instances introduites devant deux tribunaux à des dates différentes

the second corollary relief proceeding shall be deemed to be discontinued.

Jurisdiction where two proceedings commenced on same day

(3) Where proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day and neither proceeding is discontinued within thirty days after it was commenced, the Federal Court — Trial Division has exclusive jurisdiction to hear and determine any corollary relief proceeding then pending between the former spouses in respect of that matter and the corollary relief proceedings in those courts shall be transferred to the Federal Court — Trial Division on the direction of that Court.

2. The said Act is further amended by adding thereto, immediately after section 17 thereof, the following section:

Variation order by affidavit, etc

17.1 Where both former spouses are ordinarily resident in different provinces, a court of competent jurisdiction may, in accordance with any applicable rules of the court, make a variation order pursuant to subsection 17(1) on the basis of the submissions of the former spouses, whether presented orally before the court or by means of affidavits or any means of telecommunication, if both former spouses consent thereto.

3. Subsection 18(2) of the said Act is repealed and the following substituted therefor:

Provisional order

(2) Notwithstanding paragraph 5(1)(a) and subsection 17(1), where an application is made to a court in a province for a variation order in respect of a support order and

(a) the respondent in the application is ordinarily resident in another province and has not accepted the jurisdiction of the court, or both former spouses have not consented to the application of section 17.1 in respect of the matter, and

(b) in the circumstances of the case, the court is satisfied that the issues can be adequately determined by proceeding under this section and section 19,

(3) Lorsque des actions en mesures accessoires entre les mêmes ex-époux concernant le même point sont en cours devant deux tribunaux qui auraient par ailleurs compétence en vertu du paragraphe (1), que les instances ont été introduites à la même date et qu'aucune des actions n'est abandonnée dans les trente jours suivant la date d'introduction de l'instance, la Section de première instance de la Cour fédérale a compétence exclusive pour instruire ces affaires et en décider, les actions étant renvoyées à cette section sur son ordre.

Instances introduites devant deux tribunaux à la même date

2. La même loi est modifiée par insertion, après l'article 17, de ce qui suit :

17.1 Si les ex-époux résident habituellement dans des provinces différentes, le tribunal compétent peut, conformément à celles de ses règles de pratique et de procédure qui sont applicables en l'occurrence, rendre, en vertu du paragraphe 17(1), une ordonnance fondée sur les prétentions de chacun des ex-époux exposées soit devant le tribunal, soit par affidavit, soit par tout moyen de télécommunication, lorsqu'ils s'entendent pour procéder ainsi.

Ordonnance modificative par affidavit, etc

3. Le paragraphe 18(2) de la même loi est abrogé et remplacé par ce qui suit :

(2) Par dérogation à l'alinéa 5(1)a) ou au paragraphe 17(1), lorsqu'une demande est présentée devant le tribunal d'une province en vue d'une ordonnance modificative d'une ordonnance alimentaire, le tribunal rend par défaut, avec ou sans préavis au défendeur, une ordonnance modificative conditionnelle, qui n'est exécutoire que sur confirmation dans le cadre de la procédure prévue à l'article 19 et que selon les modalités de l'ordonnance de confirmation. Cette ordonnance conditionnelle est rendue dans les cas suivants :

Ordonnance conditionnelle

a) le défendeur réside habituellement dans une autre province et ne reconnaît pas la

the court shall make a variation order with or without notice to and in the absence of the respondent, but such order is provisional only and has no legal effect until it is confirmed in a proceeding under section 19 and, where so confirmed, it has legal effect in accordance with the terms of the order confirming it.

4. (1) Subsection 19(2) of the said Act is repealed and the following substituted therefor:

Procedure

(2) Subject to subsection (3), where documents have been sent to a court pursuant to subsection (1), the court shall serve on the respondent a copy of the documents and a notice of a hearing respecting confirmation of the provisional order and shall proceed with the hearing, in the absence of the applicant, taking into consideration the certified or sworn document setting out or summarizing the evidence given to the court that made the provisional order.

(2) All that portion of subsection 19(7) of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:

Order of confirmation or refusal

(7) At the conclusion of a proceeding under this section, the court shall make an order

5. Subsection 25(2) of the said Act is amended by adding thereto, immediately after paragraph (b) thereof, the following paragraph:

(b.1) respecting the application of section 17.1 in respect of proceedings for a variation order;

R.S., c. 4 (2nd Suppl.); 1992, c. 1

FAMILY ORDERS AND AGREEMENTS
ENFORCEMENT ASSISTANCE ACT

6. Section 7 of the *Family Orders and Agreements Enforcement Assistance Act* is repealed and the following substituted therefor:

Applications to court

7. Any person, service, agency or body entitled to have a family provision enforced

compétence du tribunal, ou encore les parties ne s'entendent pas pour procéder selon l'article 17.1;

b) dans les circonstances de l'espèce, le tribunal estime que les questions en cause peuvent être convenablement réglées en procédant conformément au présent article et à l'article 19.

4. (1) Le paragraphe 19(2) de la même loi est abrogé et remplacé par ce qui suit :

(2) Sous réserve du paragraphe (3), sur réception des documents visés au paragraphe (1), le tribunal en signifie au défendeur une copie et un avis l'informant qu'il va être procédé à l'instruction de l'affaire concernant la confirmation de l'ordonnance conditionnelle et procède à l'instruction, en l'absence du demandeur, en tenant compte du document certifié conforme ou attesté sous serment où sont énoncés ou résumés les éléments de preuve présentés devant le tribunal qui a rendu l'ordonnance conditionnelle.

(2) Le passage du paragraphe 19(7) de la même loi qui précède l'alinéa a) est abrogé et remplacé par ce qui suit :

(7) À l'issue de la procédure prévue au présent article, le tribunal rend une ordonnance :

5. Le paragraphe 25(2) de la même loi est modifié par insertion, après l'alinéa b), de ce qui suit :

b.1) la possibilité de procéder selon l'article 17.1;

LOI D'AIDE À L'EXÉCUTION DES
ORDONNANCES ET DES ENTENTES
FAMILIALES

6. L'article 7 de la *Loi d'aide à l'exécution des ordonnances et des ententes familiales* est abrogé et remplacé par ce qui suit :

7. Une requête *ex parte* peut être présentée au tribunal par toute personne ou admi-

Procédure de confirmation de l'ordonnance conditionnelle

Issue de la procédure

L.R., ch. 4 (2^e suppl.); 1992, ch. 1

Requête

**STATUTES
OF
CANADA**

**CHAPTERS
1-23**

2002

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VOLUME I

**LOIS
DU
CANADA**

**CHAPITRES
1-23**

Other reference to Federal Court Act	(2) The definition "Rules" in section 687 of the English version of the <i>Canada Shipping Act</i> is amended by replacing the expression "Federal Court Act" with the expression "Federal Courts Act".	respectivement par les articles 36, 39 et 41 de la <i>Loi modifiant la Loi sur les mesures spéciales d'importation et la Loi sur le Tribunal canadien du commerce extérieur</i> , chapitre 12 des Lois du Canada (1999);	Autres mentions
General replacement	(3) Unless the context requires otherwise, the expression "Federal Court Act" is replaced by the expression "Federal Courts Act" in <ul style="list-style-type: none"> (a) any regulation, as defined in section 2 of the <i>Statutory Instruments Act</i>; and (b) any other instrument made <ul style="list-style-type: none"> (i) in the execution of a power conferred under an Act of Parliament, or (ii) by order or under the authority of the Governor in Council. 	z.12) les paragraphes 21(1) et 37(3) de la <i>Loi sur le statut de l'artiste</i> .	Remplacement général
Replacement of "Federal Court — Trial Division" with "Federal Court"	183. (1) The following provisions are amended by replacing the expression "Federal Court — Trial Division" with the expression "Federal Court": <ul style="list-style-type: none"> (a) the definition "Court" in section 3 of the <i>Access to Information Act</i>; (b) paragraph 37(3)(a) of the <i>Canada Evidence Act</i>; (c) paragraph (g) of the definition "court" in section 103 of the <i>Canada Marine Act</i>; (d) the definition "Court" in subsection 2(1) of the <i>Citizenship Act</i>; (e) paragraph (g) of the definition "court" in subsection 16(22) of the <i>Coast- ing Trade Act</i>; (f) subsection 34(3), sections 73 and 74.09 and subsection 74.18(1) of the <i>Competition Act</i>; 	(2) Dans la définition de « Rules » à l'article 687 de la version anglaise de la <i>Loi sur la marine marchande du Canada</i> , « Federal Court Act » est remplacé par « Federal Courts Act ».	Remplacement de « Section de première instance de la Cour fédérale » par « Cour fédérale »
		(3) Sauf indication contraire du contexte, « <i>Loi sur la Cour fédérale</i> » est remplacé par « <i>Loi sur les Cours fédérales</i> » dans : <ul style="list-style-type: none"> a) tout règlement, au sens de l'article 2 de la <i>Loi sur les textes réglementaires</i>, pris en vertu d'une loi fédérale; b) tout autre texte pris : <ul style="list-style-type: none"> (i) soit dans l'exercice d'un pouvoir conféré sous le régime d'une loi fédérale, (ii) soit par le gouverneur en conseil ou sous son autorité. 	
		183. (1) Sauf indication contraire du contexte, dans toute autre loi fédérale, notamment dans les passages ci-après, « Section de première instance de la Cour fédérale » est remplacé par « Cour fédérale » : <ul style="list-style-type: none"> a) la définition de « Cour » à l'article 3 de la <i>Loi sur l'accès à l'information</i>; b) l'alinéa 37(3)a) de la <i>Loi sur la preuve au Canada</i>; c) l'alinéa g) de la définition de « tribunal » à l'article 103 de la <i>Loi maritime du Canada</i>; d) la définition de « Cour » au paragraphe 2(1) de la <i>Loi sur la citoyenneté</i>; e) l'alinéa g) de la définition de « tribunal » au paragraphe 16(22) de la <i>Loi sur le cabotage</i>; f) le paragraphe 34(3), les articles 73 et 74.09 et le paragraphe 74.18(1) de la <i>Loi sur la concurrence</i>; 	

(g) paragraph 3(2)(a) of the *Competition Tribunal Act*;

(h) subsection 13(2) of the *Comprehensive Nuclear Test-Ban Treaty Implementation Act*;

(i) subsections 3(3), 4(3), 5(3) and 23(2) of the *Divorce Act*;

(j) sections 81.2 and 81.21, subsections 81.22(1) and (2), paragraph 81.23(1)(a), subsection 81.23(2), sections 81.24, 81.29 and 81.3 and subsections 81.31(1), (2) and (4), 81.32(3), 81.34(1) to (3), 81.36(1) and (6) and 86(6) of the *Excise Tax Act*;

(k) subsection 8(1) of the *Foreign Publishers Advertising Services Act*;

(l) paragraph 46.04(3.1)(b), subparagraph 49(1)(c)(ii), subsections 77(3.2) and (3.3) and 82.1(1), (3) to (5) and (10), section 82.2 and subsections 83(1) to (3), 102.17(1) and 107.1(1) of the *Immigration Act*;

(m) subsection 180(2) of the *Income Tax Act*;

(n) subsection 14(1) of the *Motor Vehicle Fuel Consumption Standards Act*;

(o) section 101 of the *National Energy Board Act*;

(p) subsection 27(1) of the *Northern Pipeline Act*;

(q) section 76 of the *Official Languages Act*;

(r) the definition "Court" in subsection 2(1) of the *Personal Information Protection and Electronic Documents Act*;

(s) the definition "Court" in section 3 of the *Privacy Act*; and

(t) section 38 of the *Supreme Court Act*.

g) l'alinéa 3(2)a) de la *Loi sur le Tribunal de la concurrence*;

h) le paragraphe 13(2) de la *Loi de mise en oeuvre du Traité d'interdiction complète des essais nucléaires*;

i) les paragraphes 3(3), 4(3), 5(3) et 23(2) de la *Loi sur le divorce*;

j) les articles 81.2 et 81.21, les paragraphes 81.22(1) et (2), l'alinéa 81.23(1)a), le paragraphe 81.23(2), les articles 81.24, 81.29 et 81.3 et les paragraphes 81.31(1), (2) et (4), 81.32(3), 81.34(1) à (3), 81.36(1) et (6) et 86(6) de la *Loi sur la taxe d'accise*;

k) le paragraphe 8(1) de la *Loi sur les services publicitaires fournis par des éditeurs étrangers*;

l) l'alinéa 46.04(3.1)b), le sous-alinéa 49(1)c)(ii), les paragraphes 77(3.2) et (3.3), 82.1(1), (3) à (5) et (10), l'article 82.2, les paragraphes 83(1) à (3), 102.17(1) et 107.1(1) de la *Loi sur l'immigration*;

m) le paragraphe 180(2) de la *Loi de l'impôt sur le revenu*;

n) le paragraphe 14(1) de la *Loi sur les normes de consommation de carburant des véhicules automobiles*;

o) l'article 101 de la *Loi sur l'Office national de l'énergie*;

p) le paragraphe 27(1) de la *Loi sur le pipe-line du Nord*;

q) l'article 76 de la *Loi sur les langues officielles*;

r) la définition de « Cour » au paragraphe 2(1) de la *Loi sur la protection des renseignements personnels et les documents électroniques*;

s) la définition de « Cour » à l'article 3 de la *Loi sur la protection des renseignements personnels*;

t) l'article 38 de la *Loi sur la Cour suprême*.

(2) Unless the context requires otherwise, the expression "Federal Court — Trial Division" is replaced by the expression "Federal Court" in

(2) Sauf indication contraire du contexte, « Section de première instance de la Cour fédérale » est remplacé par « Cour fédérale » dans :

Remplacement de « Section de première instance de la Cour fédérale » par « Cour fédérale »

Divorce Act	Loi sur le divorce
R.S.C., 1985, c. 3 (2nd Supp.)	L.R.C. (1985), ch. 3 (2^e suppl.)
An Act respecting divorce and corollary relief	Loi concernant le divorce et les mesures accessoires
[1986, c. 4, assented to 13th February, 1986] SHORT TITLE	[1986, ch. 4, sanctionné le 13 février 1986] TITRE ABRÉGÉ
Short title	Note marginale : Titre abrégé
1. This Act may be cited as the <i>Divorce Act</i> .	1. <i>Loi sur le divorce</i> .
INTERPRETATION	DÉFINITIONS
Definitions	Définitions
2. (1) In this Act, "applicable guidelines" « <i>lignes directrices applicables</i> » "applicable guidelines" means	2. (1) Les définitions qui suivent s'appliquent à la présente loi. « <i>lignes directrices applicables</i> » "applicable guidelines" « <i>lignes directrices applicables</i> » S'entend :
(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	a) dans le cas où les époux ou les ex-époux résident habituellement, à la date à laquelle la demande d'ordonnance alimentaire au profit d'un enfant ou la demande modificative de celle-ci est présentée ou à la date à laquelle le nouveau montant de l'ordonnance alimentaire au profit d'un enfant doit être fixée sous le régime de l'article 25.1, dans la même province — qui est désignée par un décret pris en vertu du paragraphe (5) — , des textes législatifs de celle-ci précisés dans le décret;
(b) in any other case, the Federal Child Support Guidelines;	b) dans les autres cas, des lignes directrices fédérales sur les pensions alimentaires pour enfants.
Provincial child support guidelines	Lignes directrices provinciales sur les aliments pour les enfants
(5) The Governor in Council may, by order, designate a province for the purposes of the definition "applicable guidelines" in subsection (1) if the laws of the province establish comprehensive guidelines for the determination of child support that deal with the matters referred to in section 26.1. The order shall specify the laws of the province that constitute the guidelines of the province.	(5) Le gouverneur en conseil peut, par décret, désigner une province pour l'application de la définition de « <i>lignes directrices applicables</i> » au paragraphe (1) si la province a établi, relativement aux aliments pour enfants, des lignes directrices complètes qui traitent des questions visées à l'article 26.1. Le décret mentionne les textes législatifs qui constituent les lignes directrices de la province.

JURISDICTION	COMPÉTENCE
<p>Jurisdiction in divorce proceedings</p> <p>3. (1) A court in a province has jurisdiction to hear and determine a divorce proceeding if either spouse has been ordinarily resident in the province for at least one year immediately preceding the commencement of the proceeding.</p>	<p>Compétence dans le cas d'un divorce</p> <p>3. (1) Dans le cas d'une action en divorce, a compétence pour instruire l'affaire et en décider le tribunal de la province où l'un des époux a résidé habituellement pendant au moins l'année précédant l'introduction de l'instance.</p>
<p>Jurisdiction where two proceedings commenced on different days</p> <p>(2) Where divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days and the proceeding that was commenced first is not discontinued within thirty days after it was commenced, the court in which a divorce proceeding was commenced first has exclusive jurisdiction to hear and determine any divorce proceeding then pending between the spouses and the second divorce proceeding shall be deemed to be discontinued.</p>	<p>Instances introduites devant deux tribunaux à des dates différentes</p> <p>(2) Lorsque des actions en divorce entre les mêmes époux sont en cours devant deux tribunaux qui auraient par ailleurs compétence en vertu du paragraphe (1), que les instances ont été introduites à des dates différentes et que l'action engagée la première n'est pas abandonnée dans les trente jours suivant la date d'introduction de l'instance, le tribunal saisi en premier a compétence exclusive pour instruire l'affaire et en décider, la seconde action étant considérée comme abandonnée.</p>
<p>Jurisdiction where two proceedings commenced on same day</p> <p>(3) Where divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day and neither proceeding is discontinued within thirty days after it was commenced, the Federal Court has exclusive jurisdiction to hear and determine any divorce proceeding then pending between the spouses and the divorce proceedings in those courts shall be transferred to the Federal Court on the direction of that Court.</p> <p>R.S., 1985, c. 3 (2nd Supp.), s. 3; 2002, c. 8, s. 183.</p>	<p>Instances introduites devant deux tribunaux à la même date</p> <p>(3) Lorsque des actions en divorce entre les mêmes époux sont en cours devant deux tribunaux qui auraient par ailleurs compétence en vertu du paragraphe (1), que les instances ont été introduites à la même date et qu'aucune des actions n'est abandonnée dans les trente jours suivant la date d'introduction de l'instance, la Cour fédérale a compétence exclusive pour instruire ces affaires et en décider, les actions étant renvoyées à cette section sur son ordre.</p> <p>L.R. (1985), ch. 3 (2^e suppl.), art. 3; 2002, ch. 8, art. 183.</p>
<p>Jurisdiction in corollary relief proceedings</p> <p>4. (1) A court in a province has jurisdiction to hear and determine a corollary relief proceeding if</p> <p>(a) either former spouse is ordinarily resident in the province at the commencement of the proceeding; or</p> <p>(b) both former spouses accept the</p>	<p>Compétence dans le cas des mesures accessoires</p> <p>4. (1) Dans le cas d'une action en mesures accessoires, a compétence pour instruire l'affaire et en décider :</p> <p>a) soit le tribunal de la province où l'un des ex-époux réside habituellement à la date de l'introduction de l'instance;</p> <p>b) soit celui dont la compétence est reconnue par les deux ex-époux.</p>

<p>jurisdiction of the court.</p> <p>Jurisdiction where two proceedings commenced on different days</p> <p>(2) Where corollary relief proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days and the proceeding that was commenced first is not discontinued within thirty days after it was commenced, the court in which a corollary relief proceeding was commenced first has exclusive jurisdiction to hear and determine any corollary relief proceeding then pending between the former spouses in respect of that matter and the second corollary relief proceeding shall be deemed to be discontinued.</p>	<p>Instances introduites devant deux tribunaux à des dates différentes</p> <p>(2) Lorsque des actions en mesures accessoires entre les mêmes ex-époux concernant le même point sont en cours devant deux tribunaux qui auraient par ailleurs compétence en vertu du paragraphe (1), que les instances ont été introduites à des dates différentes et que l'action engagée la première n'est pas abandonnée dans les trente jours suivant la date d'introduction de l'instance, le tribunal saisi en premier a compétence exclusive pour instruire l'affaire et en décider, la seconde action étant considérée comme abandonnée.</p>
<p>Jurisdiction where two proceedings commenced on same day</p> <p>(3) Where proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day and neither proceeding is discontinued within thirty days after it was commenced, the Federal Court has exclusive jurisdiction to hear and determine any corollary relief proceeding then pending between the former spouses in respect of that matter and the corollary relief proceedings in those courts shall be transferred to the Federal Court on the direction of that Court.</p> <p>R.S., 1985, c. 3 (2nd Suppl.), s. 4; 1993, c. 8, s. 1; 2002, c. 8, s. 183.</p>	<p>Instances introduites devant deux tribunaux à la même date</p> <p>(3) Lorsque des actions en mesures accessoires entre les mêmes ex-époux concernant le même point sont en cours devant deux tribunaux qui auraient par ailleurs compétence en vertu du paragraphe (1), que les instances ont été introduites à la même date et qu'aucune des actions n'est abandonnée dans les trente jours suivant la date d'introduction de l'instance, la Cour fédérale a compétence exclusive pour instruire ces affaires et en décider, les actions étant renvoyées à cette section sur son ordre.</p> <p>L.R. (1985), ch. 3 (2^e suppl.), art. 4; 1993, ch. 8, art. 1; 2002, ch. 8, art. 183.</p>
<p>Jurisdiction in variation proceedings</p> <p>5. (1) A court in a province has jurisdiction to hear and determine a variation proceeding if</p> <p>(a) either former spouse is ordinarily resident in the province at the commencement of the proceeding; or</p> <p>(b) both former spouses accept the jurisdiction of the court.</p>	<p>Compétence dans le cas d'une action en modification</p> <p>5. (1) Dans le cas d'une action en modification, a compétence pour instruire l'affaire et en décider :</p> <p>a) soit le tribunal de la province où l'un des ex-époux réside habituellement à la date d'introduction de l'instance;</p> <p>b) soit celui dont la compétence est reconnue par les deux ex-époux.</p> <p>Instances introduites devant deux tribunaux à des dates différentes</p> <p>(2) Lorsque des actions en modification entre les mêmes ex-époux concernant le même point sont en cours devant deux tribunaux qui auraient par ailleurs compétence en vertu du paragraphe (1),</p>

<p>Jurisdiction where two proceedings commenced on different days</p> <p>(2) Where variation proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days and the proceeding that was commenced first is not discontinued within thirty days after it was commenced, the court in which a variation proceeding was commenced first has exclusive jurisdiction to hear and determine any variation proceeding then pending between the former spouses in respect of that matter and the second variation proceeding shall be deemed to be discontinued.</p>	<p>que les instances ont été introduites à des dates différentes et que l'action engagée la première n'est pas abandonnée dans les trente jours suivant la date d'introduction de l'instance, le tribunal saisi en premier a compétence exclusive pour instruire l'affaire et en décider, la seconde action étant considérée comme abandonnée.</p> <p>Instances introduites devant deux tribunaux à la même date</p> <p>(3) Lorsque des actions en modification entre les mêmes ex-époux concernant le même point sont en cours devant deux tribunaux qui auraient par ailleurs compétence en vertu du paragraphe (1), que les instances ont été introduites à la même date et qu'aucune des actions n'est abandonnée dans les trente jours suivant la date d'introduction de l'instance, la Cour fédérale a compétence exclusive pour instruire ces affaires et en décider, les actions étant renvoyées à cette section sur son ordre.</p>
<p>Jurisdiction where two proceedings commenced on same day</p> <p>(3) Where variation proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day and neither proceeding is discontinued within thirty days after it was commenced, the Federal Court has exclusive jurisdiction to hear and determine any variation proceeding then pending between the former spouses in respect of that matter and the variation proceedings in those courts shall be transferred to the Federal Court on the direction of that Court.</p> <p>R.S., 1985, c. 3 (2nd Suppl.), s. 5; 2002, c. 8, s. 183.</p>	<p>L.R. (1985), ch. 3 (2° suppl.), art. 5; 2002, ch. 8, art. 183</p> <p>ORDONNANCES ALIMENTAIRES AU PROFIT D'UN ENFANT</p> <p>Ordonnance alimentaire au profit d'un enfant</p> <p>15.1 (1) Sur demande des époux ou de l'un d'eux, le tribunal compétent peut rendre une ordonnance enjoignant à un époux de verser une prestation pour les aliments des enfants à charge ou de l'un d'eux.</p>
<p>CHILD SUPPORT ORDERS</p> <p>Child support order</p> <p>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.</p> <p>Interim order</p> <p>(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</p>	<p>Ordonnance provisoire</p> <p>(2) Sur demande des époux ou de l'un d'eux, le tribunal peut rendre une ordonnance provisoire enjoignant à un époux de verser, dans l'attente d'une décision sur la demande visée au paragraphe (1), une prestation pour les aliments des enfants à charge ou de l'un d'eux.</p> <p>Application des lignes directrices applicables</p> <p>(3) Le tribunal qui rend une ordonnance ou une ordonnance provisoire la rend conformément aux lignes directrices applicables.</p>

<p>marriage, pending the determination of the application under subsection (1).</p> <p>Guidelines apply</p> <p>(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.</p> <p>Terms and conditions</p> <p>(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.</p> <p>Court may take agreement, etc., into account</p> <p>(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</p> <p>(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</p> <p>(b) that the application of the applicable guidelines would result in an amount of child support that is inequitable given those special provisions.</p> <p>Reasons</p> <p>(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.</p> <p>Consent orders</p> <p>(7) Notwithstanding subsection (3), a court may award an amount that is different from the amount that would be determined in accordance with the</p>	<p>Modalités</p> <p>(4) La durée de validité de l'ordonnance ou de l'ordonnance provisoire rendue par le tribunal au titre du présent article peut être déterminée ou indéterminée ou dépendre d'un événement précis; elle peut être assujettie aux modalités ou aux restrictions que le tribunal estime justes et appropriées.</p> <p>Ententes, ordonnances, jugements, etc.</p> <p>(5) Par dérogation au paragraphe (3), le tribunal peut fixer un montant différent de celui qui serait déterminé conformément aux lignes directrices applicables s'il est convaincu, à la fois :</p> <p>a) que des dispositions spéciales d'un jugement, d'une ordonnance ou d'une entente écrite relatif aux obligations financières des époux ou au partage ou au transfert de leurs biens accordent directement ou indirectement un avantage à un enfant pour qui les aliments sont demandés, ou que des dispositions spéciales ont été prises pour lui accorder autrement un avantage;</p> <p>b) que le montant déterminé conformément aux lignes directrices applicables serait inéquitable eu égard à ces dispositions.</p> <p>Motifs</p> <p>(6) S'il fixe, au titre du paragraphe (5), un montant qui est différent de celui qui serait déterminé conformément aux lignes directrices applicables, le tribunal enregistre les motifs de sa décision.</p> <p>Consentement des époux</p> <p>(7) Par dérogation au paragraphe (3), le tribunal peut, avec le consentement des époux, fixer un montant qui est différent de celui qui serait déterminé conformément aux lignes directrices applicables s'il est convaincu que des arrangements raisonnables ont été conclus pour les aliments de l'enfant visé par l'ordonnance.</p> <p>Arrangements raisonnables</p> <p>(8) Pour l'application du paragraphe</p>
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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.

1997, c. 1, s. 2.

Guidelines

26.1 (1) The Governor in Council may establish guidelines respecting the making of orders for child support, including, but without limiting the generality of the foregoing, guidelines

- (a) respecting the way in which the amount of an order for child support is to be determined;
- (b) respecting the circumstances in which discretion may be exercised in the making of an order for child support;
- (c) authorizing a court to require that the amount payable under an order for child support be paid in periodic payments, in a lump sum or in a lump sum and periodic payments;
- (d) authorizing a court to require that the amount payable under an order for child support be paid or secured, or paid and secured, in the manner specified in the order;
- (e) respecting the circumstances that give rise to the making of a variation order in respect of a child support order;
- (f) respecting the determination of income for the purposes of the application of the guidelines;

(7), le tribunal tient compte des lignes directrices applicables pour déterminer si les arrangements sont raisonnables. Toutefois, les arrangements ne sont pas déraisonnables du seul fait que le montant sur lequel les conjoints s'entendent est différent de celui qui serait déterminé conformément aux lignes directrices applicables.

1997, ch. 1, art. 2.

Lignes directrices

26.1 (1) Le gouverneur en conseil peut établir des lignes directrices à l'égard des ordonnances pour les aliments des enfants, notamment pour :

- a) régir le mode de détermination du montant des ordonnances pour les aliments des enfants;
- b) régir les cas où le tribunal peut exercer son pouvoir discrétionnaire lorsqu'il rend des ordonnances pour les aliments des enfants;
- c) autoriser le tribunal à exiger que le montant de l'ordonnance pour les aliments d'un enfant soit payable sous forme de capital ou de pension, ou des deux;
- d) autoriser le tribunal à exiger que le montant de l'ordonnance pour les aliments d'un enfant soit versé ou garanti, ou versé et garanti, selon les modalités prévues par l'ordonnance;
- e) régir les changements de situation au titre desquels les ordonnances modificatives des ordonnances alimentaires au profit d'un enfant peuvent être rendues;
- f) régir la détermination du revenu pour l'application des lignes directrices;
- g) autoriser le tribunal à attribuer un revenu pour l'application des lignes directrices;
- h) régir la communication de renseignements sur le revenu et prévoir les sanctions afférentes à la non-communication de tels renseignements.

<p>(g) authorizing a court to impute income for the purposes of the application of the guidelines; and</p> <p>(h) respecting the production of income information and providing for sanctions when that information is not provided.</p> <p>Principle</p> <p>(2) The guidelines shall be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation.</p>	<p>Principe</p> <p>(2) Les lignes directrices doivent être fondées sur le principe que l'obligation financière de subvenir aux besoins des enfants à charge est commune aux époux et qu'elle est répartie entre eux selon leurs ressources respectives permettant de remplir cette obligation.</p>
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ACTS
OF THE
PARLIAMENT
OF THE
DOMINION OF CANADA

PASSED IN THE SESSION HELD IN THE
TWENTIETH AND TWENTY-FIRST YEARS OF THE REIGN OF HIS MAJESTY

KING GEORGE V

BRING THE
FOURTH SESSION OF THE SIXTEENTH PARLIAMENT

Begun and holden at Ottawa, on the Twentieth day of February, 1930, and closed by
Prorogation on the Thirtieth day of May, 1930



HIS EXCELLENCY THE RIGHT HONOURABLE
FREEMAN VISCOUNT WILLINGDON
GOVERNOR GENERAL

PART I
PUBLIC GENERAL ACTS

OTTAWA
PRINTED BY FREDERICK ALBERT ACLAND
LAW PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
ANNO DOMINI 1930

20-21 GEORGE V.

CHAP. 14.

An Act to provide in the province of Ontario for the dissolution and the annulment of Marriage.

[Assented to 30th May, 1930.]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The law of England as to the dissolution of marriage and as to the annulment of marriage, as that law existed on the fifteenth day of July, 1870, in so far as it can be made to apply in the province of Ontario, and in so far as it has not been repealed, as to the province, by any Act of the Parliament of the United Kingdom or by any Act of the Parliament of Canada or by this Act, and as altered, varied, modified or affected, as to the province, by any such Act, shall be in force in the province of Ontario.

Part of law of England, on 15th July, 1870, made law of Ontario.

2. The Supreme Court of Ontario shall have jurisdiction for all purposes of this Act.

Jurisdiction.

3. This Act may be cited as "*The Divorce Act (Ontario)*", Short title, 1930."



CHAPTER 10 (2nd Supp.)

CHAPITRE 10 (2^e Supp.)

An Act respecting the Federal Court of
Canada

Loi concernant la Cour fédérale du
Canada

[1970-71-72, c. 1]

[1970-71-72, c. 1]

SHORT TITLE

TITRE ABRÉGÉ

Short title **1.** This Act may be cited as the *Federal Court Act*.

1. La présente loi peut être citée sous Titre abrégé le titre: *Loi sur la Cour fédérale*.

INTERPRETATION

INTERPRÉTATION

Definitions **2.** In this Act

“Associate Chief Justice”
«*juge en chef adjoint*»

“Canadian maritime law”
«*droit maritime...*»

“Chief Justice”
«*chef*»

“Court” or “Federal Court”
«*Cour*»

“Associate Chief Justice” means the Associate Chief Justice of the Court;

“Canadian maritime law” means the law that was administered by the Exchequer Court of Canada on its Admiralty side by virtue of the *Admiralty Act* or any other statute, or that would have been so administered if that Court had had, on its Admiralty side, unlimited jurisdiction in relation to maritime and admiralty matters, as that law has been altered by this or any other Act of the Parliament of Canada;

“Chief Justice” means the Chief Justice of the Court;

“Court” or “Federal Court” means the Federal Court of Canada;

2. Dans la présente loi

«bien» désigne n'importe quelle sorte de bien, mobilier ou immobilier, corporel ou incorporel, et notamment, sans restreindre la portée générale de ce qui précède, un droit de n'importe quelle nature, une part ou un droit d'action;

«Cour» ou «Cour fédérale» désigne la Cour fédérale du Canada;

«Cour d'appel» ou «Cour d'appel fédérale» désigne la division de la Cour appelée Cour d'appel ou Cour d'appel fédérale;

«Cour suprême» désigne la Cour suprême du Canada;

«Couronne» désigne Sa Majesté du chef du Canada;

«Division de première instance» désigne la division de la Cour appelée première instance de la Cour fédérale;

Définitions

«bien»
«*property*»

«Cour» ou «Cour fédérale»
«*Couri*»

«Cour d'appel» ou «Cour d'appel fédérale»
«*Court of...*»

«Cour suprême»
«*Supreme...*»

«Couronne»
«*Crown*»

«Division de première instance»
«*Trial...*»

<p>“ship” «navire»</p>	<p>“ship” includes any description of vessel or boat used or designed for use in navigation without regard to method or lack of propulsion;</p>	<p>«pratique et procédure» s’entend également de la preuve relative aux questions de pratique et de procédure;</p>	<p>«pratique et procédure» procédure “practice” ...”</p>
<p>“Supreme Court” «Cour suprême»</p>	<p>“Supreme Court” means the Supreme Court of Canada;</p>	<p>«redressement» comprend toute espèce de redressement judiciaire, qu’il soit sous forme de dommages-intérêts, de paiement d’argent, d’injonction, de déclaration, de restitution d’un droit incorporel, de restitution d’un bien mobilier ou immobilier, ou sous une autre forme;</p>	<p>«redressement» redressement “relief”</p>
<p>“Trial Division” «Division...»</p>	<p>“Trial Division” means that division of the Court called the Federal Court—Trial Division.</p>	<p>«Règles» désigne les règles et ordonnances établies en vertu de l’article 46 ou qui demeurent en vigueur aux termes du paragraphe 62(6), ainsi que toute autre disposition du droit en la matière.</p>	<p>«Règles» Règles “Rules”</p>

THE COURT

LA COUR

Original Court continued

3. The court of law, equity and admiralty in and for Canada now existing under the name of the Exchequer Court of Canada is hereby continued under the name of the Federal Court of Canada as an additional court for the better administration of the laws of Canada and shall continue to be a superior court of record having civil and criminal jurisdiction.

3. Le tribunal de *common law*, d'*equity* et d'amirauté du Canada existant actuellement sous le nom de Cour de l'Échiquier du Canada est maintenu sous le nom de Cour fédérale du Canada, en tant que tribunal supplémentaire pour la bonne application du droit du Canada, et demeure une cour supérieure d'archives ayant compétence en matière civile et pénale.

Court to consist of two divisions

4. The Federal Court of Canada shall hereafter consist of two divisions, called the Federal Court—Appeal Division (which may be referred to as the Court of Appeal or Federal Court of Appeal) and the Federal Court—Trial Division.

4. La Cour fédérale du Canada est désormais formée de deux divisions appelées Division d'appel de la Cour fédérale qui peut être appelée Cour d'appel ou Cour d'appel fédérale et Division de première instance de la Cour fédérale.

THE JUDGES

LES JUGES

Constitution of Court

5. (1) The Federal Court of Canada shall consist of the following judges:

- (a) a chief justice called the Chief Justice of the Federal Court of Canada, who shall be the president of the Court, shall be the president of and a member of the Court of Appeal and shall be *ex officio* a member of the Trial Division;
- (b) an associate chief justice called the Associate Chief Justice of the Federal Court of Canada, who shall be the

5. (1) La Cour fédérale du Canada est composée des juges suivants:

- a) un juge en chef, appelé juge en chef de la Cour fédérale du Canada, qui est président de la Cour, président et membre de la Cour d'appel et membre de droit de la Division de première instance;
- b) un juge en chef adjoint, appelé juge en chef adjoint de la Cour fédérale du Canada, qui est président et membre de

Appeal, and every application or reference to the Court of Appeal under section 28, shall be heard in the Court of Appeal before not fewer than three judges sitting together and always before an uneven number of judges, and, otherwise, the business of that Court shall be dealt with by such judge or judges as the Chief Justice may from time to time arrange.

Arrangements to be made by Chief Justice

(2) The Chief Justice shall designate the judges to sit from time to time and the appeals or matters to be heard by them.

Place of sittings

(3) The place of each sittings of the Court of Appeal shall be arranged by the Chief Justice to suit, as nearly as may be, the convenience of the parties.

No judge may hear appeal from judgment by him

(4) A judge shall not sit on the hearing of an appeal from a judgment pronounced by himself.

Chief Justice to preside

(5) The Chief Justice when present at any sittings of the Court of Appeal shall preside and, in his absence, the senior judge who is present shall preside.

pel ainsi que toute demande ou tout renvoi faits à la Cour d'appel en vertu de l'article 28 sont entendus devant la Cour d'appel par trois juges au moins siégeant ensemble et toujours par un nombre impair de juges; dans les autres cas, les affaires de la Cour sont expédiées par le ou les juges que le juge en chef peut y affecter à l'occasion.

(2) Le juge en chef répartit les séances entre les juges et il désigne les appels ou questions qui doivent être entendus par chacun d'eux. Dispositions qui doivent être prises par le juge en chef

(3) Autant que possible, le juge en chef choisit, pour chacune des séances de la Cour d'appel, le lieu qui convient aux parties. Lieu des séances

(4) Un juge ne doit pas siéger lors de l'audition d'un appel d'un jugement qu'il a prononcé. Aucun juge ne peut entendre l'appel d'un de ses jugements

(5) Toute séance de la Cour d'appel est présidée par le juge en chef, lorsqu'il est présent, ou, en son absence, par celui des juges présents qui occupe le rang le plus élevé. Le juge en chef préside

JURISDICTION OF TRIAL DIVISION

Crown litigation

17. (1) The Trial Division has original jurisdiction in all cases where relief is claimed against the Crown and, except where otherwise provided, the Trial Division has exclusive original jurisdiction in all such cases.

Exclusive original jurisdiction

(2) Without restricting the generality of subsection (1), the Trial Division has exclusive original jurisdiction, except where otherwise provided, in all cases in which the land, goods or money of any person are in the possession of the Crown or in which the claim arises out of a contract entered into by or on behalf of the Crown, and in all cases in which there is a claim against the Crown for injurious affection.

COMPÉTENCE DE LA DIVISION DE PREMIÈRE INSTANCE

17. (1) La Division de première instance a compétence en première instance dans tous les cas où l'on demande contre la Couronne un redressement et, sauf disposition contraire, cette compétence est exclusive. Litiges où la Couronne est défenderesse

(2) Sans restreindre la portée générale du paragraphe (1), la Division de première instance, sauf disposition contraire, a compétence exclusive en première instance dans tous les cas où la propriété, les effets ou l'argent d'une personne sont en possession de la Couronne, dans tous les cas où la demande découle ou est née d'un contrat passé par la Couronne ou pour son compte et dans tous les cas où une demande peut être faite contre la Couronne pour atteinte défavorable. Compétence exclusive en première instance

Idem

(3) The Trial Division has exclusive original jurisdiction to hear and determine the following matters:

(a) the amount to be paid where the Crown and any person have agreed in writing that the Crown or that person shall pay an amount to be determined by

- (i) the Federal Court,
- (ii) the Trial Division, or
- (iii) the Exchequer Court of Canada;

(b) any question of law, fact, or mixed law and fact that the Crown and any person have agreed in writing shall be determined by

- (i) the Federal Court,
 - (ii) the Trial Division, or
 - (iii) the Exchequer Court of Canada;
- and

(c) proceedings to determine disputes where the Crown is or may be under an obligation, in respect of which there are or may be conflicting claims.

Concurrent original jurisdiction

(4) The Trial Division has concurrent original jurisdiction

(a) in proceedings of a civil nature in which the Crown or the Attorney General of Canada claims relief; and

(b) in proceedings in which relief is sought against any person for anything done or omitted to be done in the performance of his duties as an officer or servant of the Crown.

Exclusive original jurisdiction

(5) The Trial Division has exclusive original jurisdiction to hear and determine every application for a writ of *habeas corpus ad subjiciendum*, writ of *certiorari*, writ of prohibition or writ of *mandamus*, in relation to any member of the Canadian Forces serving outside Canada.

(3) La Division de première instance a Idem compétence exclusive pour entendre et juger en première instance les questions suivantes:

a) le montant à payer lorsque la Couronne et une personne ont convenu par écrit que la Couronne ou cette personne paie un montant devant être déterminé

- (i) par la Cour fédérale,
- (ii) par la Division de première instance, ou
- (iii) par la Cour de l'Échiquier du Canada;

b) toute question de droit, question de fait ou question de droit et de fait que la Couronne et une personne ont convenu par écrit de faire juger

- (i) par la Cour fédérale,
- (ii) par la Division de première instance, ou
- (iii) par la Cour de l'Échiquier du Canada; et

c) les procédures aux fins de juger les contestations dans lesquelles la Couronne a ou peut avoir une obligation qui est ou peut être l'objet de demandes contradictoires.

(4) La Division de première instance a Compétence concurrente en première instance

a) dans les procédures d'ordre civil dans lesquelles la Couronne ou le procureur général du Canada demande redressement; et

b) dans les procédures dans lesquelles on cherche à obtenir un redressement contre une personne en raison d'un acte ou d'une omission de cette dernière dans l'exercice de ses fonctions à titre de fonctionnaire ou préposé de la Couronne.

(5) La Division de première instance a Compétence exclusive en première instance

(5) La Division de première instance a compétence exclusive pour entendre et juger en première instance toute demande de bref d'*habeas corpus ad subjiciendum*, de *certiorari*, de prohibition ou de *mandamus*, à l'égard d'un membre des Forces canadiennes en service à l'étranger.

Extra-ordinary remedies

18. The Trial Division has exclusive original jurisdiction

(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

Inter-govern-mental disputes

19. Where the legislature of a province has passed an Act agreeing that the Court, whether referred to in that Act by its new name or by its former name, has jurisdiction in cases of controversies,

(a) between Canada and such province, or

(b) between such province and any other province or provinces that have passed a like Act,

the Court has jurisdiction to determine such controversies and the Trial Division shall deal with any such matter in the first instance.

Industrial property

20. The Trial Division has exclusive original jurisdiction as well between subject and subject as otherwise,

(a) in all cases of conflicting applications for any patent of invention, or for the registration of any copyright, trade mark or industrial design, and

(b) in all cases in which it is sought to impeach or annul any patent of invention, or to have any entry in any register of copyrights, trade marks or industrial designs made, expunged, varied or rectified,

and has concurrent jurisdiction in all other cases in which a remedy is sought under the authority of any Act of the Parliament of Canada or at law or in equity, respecting

18. La Division de première instance a compétence exclusive en première instance Recours extra-ordinaires

a) pour émettre une injonction, un bref de *certiorari*, un bref de *mandamus*, un bref de prohibition ou un bref de *quo warranto*, ou pour rendre un jugement déclaratoire, contre tout office, toute commission ou tout autre tribunal fédéral; et

b) pour entendre et juger toute demande de redressement de la nature de celui qu'envisage l'alinéa a), et notamment toute procédure engagée contre le procureur général du Canada aux fins d'obtenir le redressement contre un office, une commission ou à un autre tribunal fédéral.

19. Lorsque l'assemblée législative d'une province a adopté une loi reconnaissant que la Cour, qu'elle y soit désignée sous son nouveau ou son ancien nom, a compétence dans les cas de litige Différends entre gouvernements

a) entre le Canada et cette province, ou

b) entre cette province et une ou plusieurs autres provinces ayant adopté une loi au même effet,

la Cour a compétence pour juger ces litiges et la Division de première instance connaît de ces questions en première instance.

20. La Division de première instance a compétence exclusive en première instance, tant entre sujets qu'autrement, Propriété industrielle

a) dans tous les cas où des demandes de brevet d'invention ou d'enregistrement d'un droit d'auteur, d'une marque de commerce ou d'un dessin industriel sont incompatibles, et

b) dans tous les cas où l'on cherche à faire invalider ou annuler un brevet d'invention ou insérer, rayer, modifier ou rectifier une inscription dans un registre des droits d'auteur, des marques de commerce ou des dessins industriels,

et elle a compétence concurrente dans tous les autres cas où l'on cherche à obtenir un redressement en vertu d'une

Proceeding before Exchequer Court to continue

63. (1) Every proceeding taken in the Exchequer Court before the 1st day of June 1971 shall be taken up and continued under and in conformity with this Act.

63. (1) Toute procédure engagée devant la Cour de l'Échiquier avant le 1^{er} juin 1971 est reprise et continuée en vertu et en conformité de la présente loi.

Continuation des procédures engagées à la Cour de l'Échiquier

Proceeding in District Registry in Admiralty to continue

(2) Every proceeding referred to in subsection (1) that was instituted in a District Registry in Admiralty shall be taken up and continued as though it had been instituted in the Registry at Ottawa, and the records of each District Registry shall be amalgamated with and become part of the records of the Court.

(2) Pour toute procédure mentionnée au paragraphe (1) qui a été engagée dans un greffe de district en amirauté, l'instance est reprise et continuée comme si elle avait été engagée au greffe d'Ottawa, et les registres de chaque greffe de district sont joints aux registres de la Cour et en font partie.

Continuation des procédures engagées à un greffe de district en amirauté

Assignment of proceedings between divisions of Court

(3) Rules made under section 46 either before or after the 1st day of June 1971 shall make provision for the assignment of the proceedings referred to in subsection (1) as between the two divisions of the Court.

(3) Les règles établies en vertu de l'article 46 soit avant, soit après le 1^{er} juin 1971, doivent prévoir la répartition des procédures mentionnées au paragraphe (1) entre les deux divisions de la Cour.

Répartition des procédures entre les divisions de la Cour

REPEAL

Repeal of Acts

64. (1) The *Exchequer Court Act*, except sections 26 to 28 thereof, the *Admiralty Act* and the *Petition of Right Act* are repealed.

64. (1) La *Loi sur la Cour de l'Échiquier*, à l'exception de ses articles 26 à 28, la *Loi sur l'Amirauté* et la *Loi sur les pétitions de droit* sont abrogées.

Abrogation de lois

References

(2) Whenever the expression "Exchequer Court" or "Exchequer Court of Canada", "Registrar" or "Registrar of the Exchequer Court" or "*Exchequer Court Act*" is mentioned or referred to in any Act of the Parliament of Canada, other than this Act, including any such Act passed in the third session of the twenty-eighth parliament, or in any order, rule or regulation made under any such Act, there shall in every case, unless the context otherwise requires, be substituted "Federal Court" or "Federal Court of Canada", "Registry of the Federal Court" or "Registry of the Federal Court of Canada" or "*Federal Court Act*", as the case may be.

(2) Chaque fois que les expressions «Cour de l'Échiquier» ou «Cour de l'Échiquier du Canada», «registraire» ou «registraire de la Cour de l'Échiquier» ou «*Loi sur la Cour de l'Échiquier*» font l'objet d'une mention ou d'un renvoi dans une loi du Parlement du Canada, autre que la présente loi, y compris une telle loi adoptée au cours de la troisième session de la vingt-huitième législature, ou dans un décret, un arrêté, une ordonnance, une règle ou un règlement établis en vertu d'une telle loi, il faut, dans chaque cas, sauf si le contexte s'y oppose, leur substituer les expressions «Cour fédérale» ou «Cour fédérale du Canada», «greffe de la Cour fédérale» ou «greffe de la Cour fédérale du Canada» ou «*Loi sur la Cour fédérale*», selon le cas.

Renvoi

Amendments

65. The Acts mentioned in Schedule II to this Act are amended in the manner and to the extent indicated in that Schedule.

65. Les lois mentionnées à l'annexe II de la présente loi sont modifiées de la manière et dans la mesure indiquées à cette annexe.

Modifications

ANNEXE II (suite)

Item	Loi concernée	Modification
		<p>nouvel avis d'appel à celui qui a été rayé.</p> <p>(13) La Cour peut, à sa discrétion,</p> <p>a) rayer toute partie d'une réplique pour inobservation du présent article, ou permettre la modification d'une réplique, et</p> <p>b) rayer une réplique pour inobservation du présent article et ordonner la production d'une nouvelle réplique dans le délai que l'ordonnance doit fixer.</p> <p>(14) Si un avis d'appel a été rayé pour inobservation du paragraphe (8) et qu'un nouvel avis d'appel ne soit pas produit lorsque la Cour l'a permis, la Cour peut, à sa discrétion, statuer sur l'appel en le rejetant.»</p> <p>6. Les paragraphes 48(19) et (20) sont abrogés.</p> <p>7. La définition de «règles» au paragraphe 48(21) est abrogée et remplacée par ce qui suit:</p> <p>« «règles» signifie les règles établies en vertu de la <i>Loi sur la Cour fédérale.</i>»</p> <p>1. La définition de «cour d'appel» à l'article 2 est abrogée et remplacée par ce qui suit:</p> <p>« «cour d'appel» désigne, quant à un appel d'une décision d'un tribunal, la cour qui exerce en général la juridiction d'appel quant aux décisions dudit tribunal;»</p> <p>2. L'alinéa 5(2)b) est abrogé et remplacé par ce qui suit:</p> <p>«b) si les requêtes ont été présentées à la même date et s'il n'y a aucun désistement dans les trente jours qui suivent, la Division de première instance de la Cour fédérale a compétence exclu-</p>
13	Loi sur le divorce S.R., c. D-8	

SCHEDULE II (Continued)

Item	Act Affected	Amendment
		<p>appeal or a new notice of appeal to be substituted for the one struck out.</p> <p>(13) The Court may, in its discretion, (a) strike out any part of a reply for failure to comply with this section or permit the amendment of a reply, and (b) strike out a reply for failure to comply with this section and order a new reply to be filed within a time to be fixed by the order.</p> <p>(14) Where a notice of appeal has been struck out for failure to comply with subsection (8) and a new notice of appeal is not filed as and when permitted by the Court, the Court may in its discretion dispose of the appeal by dismissing it."</p> <p>6. Subsections 48(19) and (20) are repealed.</p> <p>7. The definition "rules" in subsection 48(21) is repealed and the following substituted therefor:</p> <p>" "rules" means rules made under the <i>Federal Court Act.</i>"</p>
13	Divorce Act R.S., c. D-8	<p>1. The definition "court of appeal" in section 2 is repealed and the following substituted therefor:</p> <p>" "court of appeal" means, with respect to an appeal from a court, the court exercising general appellate jurisdiction with respect to appeals from that court;"</p> <p>2. Paragraph 5(2)(b) is repealed and the following substituted therefor:</p> <p>"(b) if the petitions were presented on the same day and neither of them is discontinued within thirty days after that day, the Federal Court—</p>

ANNEXE II (suite)

Item	Loi concernée	Modification
		<p>sive pour prononcer sur les conclusions des parties, et la requête ou les requêtes pendantes devant l'autre tribunal ou les autres tribunaux sont, sur l'ordre de la Division de première instance de la Cour fédérale, renvoyées à cette Cour.»</p> <p>3. Le paragraphe 20(2) est abrogé et remplacé par ce qui suit:</p> <p>«(2) Aux fins du présent article, lorsque des requêtes en divorce pendantes entre des conjoints sont, en vertu du paragraphe 5(2), sur l'ordre de la Division de première instance de la Cour fédérale, renvoyées à cette Cour, les procédures sont censées engagées dans la province spécifiée dans cet ordre comme étant la province à laquelle les conjoints sont ou ont été le plus étroitement reliés d'après les faits qui ressortent des requêtes.»</p>
14	Loi sur la taxe d'accise S.R., c. E-13	<p>Le paragraphe 60(3) est abrogé et remplacé par ce qui suit:</p> <p>«(3) Lorsque la permission d'interjeter appel selon le présent article est accordée, l'appelant doit, dans les soixante jours qui suivent la date où cette permission est accordée, déposer au greffe de la Cour fédérale la somme de cent cinquante dollars à titre de cautionnement pour les frais, et dès lors doit inscrire l'appel pour audition au jour, à l'heure et au lieu que fixe la Cour et un fonctionnaire du greffe doit donner un avis en conséquence à la Commission du tarif, à l'appelant et aux autres parties dans les procédures prévues par l'article 59.»</p>
15	Loi sur l'expropriation S.R., c. 16(1 ^{er} Supp.)	<p>1. La définition de «tribunal» au paragraphe 2(1) est abrogée et remplacée par ce qui suit:</p> <p>« «tribunal» désigne la Cour fédérale du Canada;»</p>

SCHEDULE II (Continued)

Item	Act Affected	Amendment
		<p>Trial Division has exclusive jurisdiction to grant relief between the parties and the petition or petitions pending before the other court or courts shall be removed, by direction of the Federal Court—Trial Division, into that Court for adjudication.”</p>
		<p>3. Subsection 20(2) is repealed and the following substituted therefor:</p>
		<p>“(2) For the purposes of this section, where any petitions for divorce pending between a husband and wife are removed under subsection 5(2) by direction of the Federal Court—Trial Division into that Court for adjudication, the proceedings shall be deemed to be taken in the province specified in such direction to be the province with which the husband and wife are or have been most closely associated according to the facts appearing from the petitions.”</p>
14	Excise Tax Act R.S., c. E-13	<p>Subsection 60(3) is repealed and the following substituted therefor:</p>
		<p>“(3) Where leave to appeal under this section is granted, the appellant shall, within sixty days from the granting of the leave, deposit in the Registry of the Federal Court the sum of one hundred and fifty dollars as security for costs, and thereupon shall set the appeal down for hearing at such time and place as the Court may direct, and an officer of the Registry shall notify the Tariff Board, the appellant and the other parties to the proceedings under section 59 accordingly.”</p>
15	Expropriation Act R.S., c. 16(1st Supp.)	<p>1. The definition “Court” in subsection 2(1) is repealed and the following substituted therefor:</p> <p>“ “Court” means the Federal Court of Canada;”</p>

<p style="text-align: center;">Federal Courts Act</p>	<p style="text-align: center;">Loi sur les Cours fédérales</p>
<p style="text-align: center;">R.S.C., 1985, c. F-7</p>	<p style="text-align: center;">L.R.C. (1985), ch. F-7</p>
<p style="text-align: center;">An Act respecting the Federal Court of Appeal and the Federal Court</p>	<p style="text-align: center;">Loi concernant la Cour d'appel fédérale et la Cour fédérale</p>
<p style="text-align: center;">SHORT TITLE</p>	<p style="text-align: center;">TITRE ABRÉGÉ</p>
<p>Short title</p>	<p>Note marginale :Titre abrégé</p>
<p>1. This Act may be cited as the <i>Federal Courts Act</i>. R.S., 1985, c. F-7, s. 1; 2002, c. 8, s. 14.</p>	<p>1. <i>Loi sur les Cours fédérales</i>. L.R. (1985), ch. F-7, art. 1; 2002, ch. 8, art. 14.</p>
<p>Extraordinary remedies, federal tribunals</p>	<p>Recours extraordinaires : offices fédéraux</p>
<p>18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction</p> <p>(a) to issue an injunction, writ of <i>certiorari</i>, writ of prohibition, writ of <i>mandamus</i> or writ of <i>quo warranto</i>, or grant declaratory relief, against any federal board, commission or other tribunal; and</p> <p>(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.</p>	<p>18. (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :</p> <p>a) décerner une injonction, un bref de <i>certiorari</i>, de <i>mandamus</i>, de prohibition ou de <i>quo warranto</i>, ou pour rendre un jugement déclaratoire contre tout office fédéral;</p> <p>b) connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.</p>
<p>Extraordinary remedies, members of Canadian Forces</p>	<p>Recours extraordinaires : Forces canadiennes</p>
<p>(2) The Federal Court has exclusive original jurisdiction to hear and determine every application for a writ of <i>habeas corpus ad subjiciendum</i>, writ of <i>certiorari</i>, writ of prohibition or writ of <i>mandamus</i> in relation to any member of the Canadian Forces serving outside Canada.</p>	<p>(2) Elle a compétence exclusive, en première instance, dans le cas des demandes suivantes visant un membre des Forces canadiennes en poste à l'étranger : bref d'<i>habeas corpus ad subjiciendum</i>, de <i>certiorari</i>, de prohibition ou de <i>mandamus</i>.</p>
<p>Remedies to be obtained on application</p>	<p>Exercice des recours</p>
<p>(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1. R.S., 1985, c. F-7, s. 18; 1990, c. 8, s. 4; 2002, c. 8, s.26.</p>	<p>(3) Les recours prévus aux paragraphes (1) ou (2) sont exercés par présentation d'une demande de contrôle judiciaire. L.R. (1985), ch. F-7, art. 18; 1990, ch. 8, art. 4; 2002, ch. 8, art. 26.</p> <p>Demande de contrôle judiciaire</p> <p>18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par</p>

<p>Application for judicial review</p> <p>18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.</p> <p>Marginal note: Time limitation</p> <p>(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.</p> <p>Powers of Federal Court</p> <p>(3) On an application for judicial review, the Federal Court may</p> <ul style="list-style-type: none"> ○ (a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or ○ (b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal. <p>Grounds of review</p> <p>(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal</p> <ul style="list-style-type: none"> ○ (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction; ○ (b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe; 	<p>l'objet de la demande.</p> <p>Délai de présentation</p> <p>(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.</p> <p>Pouvoirs de la Cour fédérale</p> <p>(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :</p> <ul style="list-style-type: none"> ○ a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable; ○ b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral. <p>Motifs</p> <p>(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :</p> <ul style="list-style-type: none"> ○ a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer; ○ b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter; ○ c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier; ○ d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des
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<ul style="list-style-type: none"> ○ (c) erred in law in making a decision or an order, whether or not the error appears on the face of the record; ○ (d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it; ○ (e) acted, or failed to act, by reason of fraud or perjured evidence; or ○ (f) acted in any other way that was contrary to law. <p>Defect in form or technical irregularity</p> <p>(5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may</p> <ul style="list-style-type: none"> ○ (a) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and ○ (b) in the case of a defect in form or a technical irregularity in a decision or an order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate. <p>1990, c. 8, s. 5; 2002, c. 8, s. 27.</p>	<p>éléments dont il dispose;</p> <ul style="list-style-type: none"> ○ e) a agi ou omis d'agir en raison d'une fraude ou de faux témoignages; ○ f) a agi de toute autre façon contraire à la loi. <p>Vice de forme</p> <p>(5) La Cour fédérale peut rejeter toute demande de contrôle judiciaire fondée uniquement sur un vice de forme si elle estime qu'en l'occurrence le vice n'entraîne aucun dommage important ni déni de justice et, le cas échéant, valider la décision ou l'ordonnance entachée du vice et donner effet à celle-ci selon les modalités de temps et autres qu'elle estime indiquées.</p> <p>1990, ch. 8, art. 5; 2002, ch. 8, art. 27.</p>
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A
COLLECTION
OF THE
PUBLIC GENERAL STATUTES,
PASSED IN THE
Twentieth and Twenty-first Years
OF THE REIGN OF HER MAJESTY
QUEEN VICTORIA:

Being the FIRST SESSION of the SEVENTEENTH PARLIAMENT
of the United Kingdom of GREAT BRITAIN and IRELAND.



LONDON:

Printed by GEORGE EDWARD EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty.

1857.



ANNO VICESIMO & VICESIMO PRIMO

VICTORIÆ REGINÆ.

C A P. LXXXV.

An Act to amend the Law relating to Divorce and Matrimonial Causes in *England*.

[28th August 1857.]

WHEREAS it is expedient to amend the Law relating to Divorce, and to constitute a Court with exclusive Jurisdiction in Matters Matrimonial in *England*, and with Authority in certain Cases to decree the Dissolution of a Marriage: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. This Act shall come into operation on such Day, not sooner than the First Day of *January* One thousand eight hundred and fifty-eight, as Her Majesty shall by Order in Council appoint, provided that such Order be made One Month at least previously to the Day so to be appointed.

Commence-
ment of Act.

II. As soon as this Act shall come into operation, all Jurisdiction now exercisable by any Ecclesiastical Court in *England* in respect of Divorces à *Mensâ et Thoro*, Suits of Nullity of Marriage, Suits

Jurisdiction
in Matters
Matrimonial
now vested
in Ecclesias-
tical Courts
of
to cease.

Divorce and Matrimonial Causes.

of Jactitation of Marriage, Suits for Restitution of Conjugal Rights, and in all Causes, Suits, and Matters Matrimonial, shall cease to be so exerciseable, except so far as relates to the granting of Marriage Licences, which may be granted as if this Act had not been passed.

The Court may enforce Decrees or Orders made before this Act comes into operation.

III. Any Decree or Order of any Ecclesiastical Court of competent Jurisdiction which shall have been made before this Act comes into operation, in any Cause or Matter Matrimonial, may be enforced or otherwise dealt with by the Court for Divorce and Matrimonial Causes herein-after mentioned, in the same Way as if it had been originally made by the said Court under this Act.

As to Suits pending when this Act comes into operation.

IV. All Suits and Proceedings in Causes and Matters Matrimonial which at the Time when this Act comes into operation shall be pending in any Ecclesiastical Court in *England* shall be transferred to, dealt with, and decided by the said Court for Divorce and Matrimonial Causes as if the same had been originally instituted in the said Court.

Power to Judges whose Jurisdiction is determined to deliver written Judgments.

V. Provided, That if at the Time when this Act comes into operation any Cause or Matter which would be transferred to the said Court for Divorce and Matrimonial Causes under the Enactment herein-before contained shall have been heard before any Judge having Jurisdiction in relation to such Cause or Matter, and be then standing for Judgment, such Judge may at any Time within Six Weeks after the Time when this Act comes into operation give in to One of the Registrars attending the Court for Divorce and Matrimonial Causes a written Judgment thereon signed by him; and a Decree or Order, as the Case may require, shall be drawn up in pursuance of such Judgment, and every such Decree or Order shall have the same Force and Effect as if it had been drawn up in pursuance of a Judgment of the Court for Divorce and Matrimonial Causes on the Day on which the same was delivered to the Registrar, and shall be subject to Appeal under this Act.

Jurisdiction over Causes Matrimonial to be exercised by the Court for Divorce and Matrimonial Causes.

VI. As soon as this Act shall come into operation, all Jurisdiction now vested in or exerciseable by any Ecclesiastical Court or Person in *England* in respect of Divorces *à Mensâ et Thoro*, Suits of Nullity of Marriage, Suits for Restitution of Conjugal Rights, or Jactitation of Marriage, and in all Causes, Suits, and Matters Matrimonial, except in respect of Marriage Licences, shall belong to and be vested in Her Majesty, and such Jurisdiction, together with the Jurisdiction conferred by this Act, shall be exercised in the Name of Her Majesty

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Majesty in a Court of Record to be called "The Court for Divorce and Matrimonial Causes."

VII. No Decree shall hereafter be made for a Divorce *à Mensâ et Thoro*, but in all Cases in which a Decree for a Divorce *à Mensâ et Thoro* might now be pronounced the Court may pronounce a Decree for a Judicial Separation, which shall have the same Force and the same Consequences as a Divorce *à Mensâ et Thoro* now has.

No Decree for Divorce *à Mensâ et Thoro* to be made hereafter, but a Judicial Separation.

VIII. The Lord Chancellor, the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, the Lord Chief Baron of the Court of Exchequer, the Senior Puisne Judge for the Time being in each of the Three last-mentioned Courts, and the Judge of Her Majesty's Court of Probate constituted by any Act of the present Session, shall be the Judges of the said Court.

Judges of the Court.

IX. The Judge of the Court of Probate shall be called the Judge Ordinary of the said Court, and shall have full Authority, either alone or with One or more of the other Judges of the said Court, to hear and determine all Matters arising therein, except Petitions for the dissolving of or annulling Marriage, and Applications for new Trials of Questions or Issues before a Jury, Bills of Exception, Special Verdicts, and Special Cases, and, except as aforesaid, may exercise all the Powers and Authority of the said Court.

Judge of the Court of Probate to be the Judge Ordinary, and shall have full Authority, &c.

X. All Petitions, either for the Dissolution or for a Sentence of Nullity of Marriage, and Applications for new Trials of Questions or Issues before a Jury, shall be heard and determined by Three or more Judges of the said Court, of whom the Judge of the Court of Probate shall be One.

Petitions for Dissolution of a Marriage, &c. to be heard by Three Judges.

XI. During the temporary Absence of the Judge Ordinary, the Lord Chancellor may by Writing under his Hand authorize the Master of the Rolls, the Judge of the Admiralty Court, or either of the Lords Justices, or any Vice-Chancellor, or any Judge of the Superior Courts of Law at *Westminster*, to act as Judge Ordinary of the said Court for Divorce and Matrimonial Causes, and the Master of the Rolls, the Judge of the Admiralty Court, Lord Justice, Vice-Chancellor, or Judge of the Superior Courts, shall, when so acting, have and exercise all the Jurisdiction, Power, and Authority which might have been exercised by the Judge Ordinary.

Who to act as Judge during Absence of the Judge Ordinary.

XII. The Court for Divorce and Matrimonial Causes shall hold its Sittings at such Place or Places in *London* or *Middlesex* or elsewhere

Sittings of the Court.

Divorce and Matrimonial Causes.

elsewhere as Her Majesty in Council shall from Time to Time appoint.

Seal of the Court.

XIII. The Lord Chancellor shall direct a Seal to be made for the said Court, and may direct the same to be broken, altered, and renewed, at his Discretion; and all Decrees and Orders, or Copies of Decrees or Orders, of the said Court, sealed with the said Seal, shall be received in Evidence.

Officers of the Court.

XIV. The Registrars and other Officers of the Principal Registry of the Court of Probate shall attend the Sittings of the Court for Divorce and Matrimonial Causes, and assist in the Proceedings thereof, as shall be directed by the Rules and Orders under this Act.

Power to Advocates, Barristers, &c. of Ecclesiastical and Superior Courts to practise in the Court.

XV. All Persons admitted to practise as Advocates or Proctors respectively in any Ecclesiastical Court in *England*, and all Barristers, Attornies, and Solicitors entitled to practise in the Superior Courts at *Westminster*, shall be entitled to practise in the Court of Divorce and Matrimonial Causes; and such Advocates and Barristers shall have the same relative Rank and Precedence which they now have in the Judicial Committee of the Privy Council, unless and until Her Majesty shall otherwise order.

Sentence of Judicial Separation may be obtained by Husband or Wife for Adultery, &c.

XVI. A Sentence of Judicial Separation (which shall have the Effect of a Divorce *à Mensâ et Thoro* under the existing Law, and such other legal Effect as herein mentioned,) may be obtained, either by the Husband or the Wife, on the Ground of Adultery, or Cruelty, or Desertion without Cause for Two Years and upwards.

Application for Restitution of Conjugal Rights or Judicial Separation may be made by Husband or Wife by Petition to Court, &c.

XVII. Application for Restitution of Conjugal Rights or for Judicial Separation on any one of the Grounds aforesaid may be made by either Husband or Wife, by Petition to the Court, or to any Judge of Assize at the Assizes held for the County in which the Husband and Wife reside or last resided together, and which Judge of Assize is hereby authorized and required to hear and determine such Petition, according to the Rules and Regulations which shall be made under the Authority of this Act; and the Court or Judge to which such Petition is addressed, on being satisfied of the Truth of the Allegations therein contained, and that there is no legal Ground why the same should not be granted, may decree such Restitution of Conjugal Rights or Judicial Separation accordingly, and where the Application is by the Wife may make any Order for Alimony which shall be deemed just: Provided always, that any Judge of Assize to whom such Petition shall be presented may refer the same to any of Her Majesty's Counsel or Serjeant at Law named in the Commission

Divorce and Matrimonial Causes.

sion of Assize or Nisi Prius, and such Counsel or Serjeant shall, for the Purpose of deciding upon the Matters of such Petition, have all the Powers that any such Judge would have had by virtue of this Act or otherwise.

XVIII. For the Purpose of hearing and deciding all Applications under the Authority of this Act, the Judge of Assize or Person nominated by him as aforesaid shall be entitled to avail himself of the Services of all Officers, and use and exercise all Powers and Authorities, which the Court of Assize may employ, use, and exercise for the Determination of Causes and other Matters now usually heard and decided by them respectively, and the said Judge of Assize or other Person shall also for the Purpose have and be entitled to exercise all the Powers and Authorities hereby given to the Court for the hearing and deciding Applications made to it, and also the Powers hereby given to the Court to make Provision touching the Custody, Maintenance, and Education of Children; and every Order made by any Judge of Assize or other Person under the Authority of this Act may, on the Application of the Person obtaining the same, be entered as an Order of the Court, and when so entered shall have the same Force and Effect, and be enforced in the same Manner, as if such Order had been originally made by the Court.

Powers of Judges of Assize for Purposes of deciding Applications under Authority of this Act.

XIX. The Court shall from Time to Time fix and regulate the Fees which shall be payable upon all Proceedings under any Application to a Judge of Assize under this Act; and such Fees shall be received in Money, for their own Benefit, by the Persons to whom or for whose Use the same shall be directed to be paid.

The Court to regulate Fees on Proceedings before Judges, &c.

XX. Any Order so entered as aforesaid may be reviewed, and either altered or reversed on Appeal to the Judge Ordinary of the Court, but such Appeal shall not stay the intermediate Execution of the Order, unless the Judge Ordinary shall so direct, who shall have Power, if such Appeal be dismissed or abandoned, to order the Appellant to pay to the other Party the full Costs incurred by reason of such Appeal.

Orders may be reviewed.

XXI. A Wife deserted by her Husband may at any Time after such Desertion, if resident within the Metropolitan District, apply to a Police Magistrate, or if resident in the Country to Justices in Petty Sessions, or in either Case to the Court, for an Order to protect any Money or Property she may acquire by her own lawful Industry, and Property which she may become possessed of, after such Desertion, against her Husband or his Creditors, or any Person claiming under him; and such Magistrate or Justices or Court, if satisfied of

Wife deserted by her Husband may apply to a Police Magistrate or Justices in Petty Sessions for Protection.

Divorce and Matrimonial Causes.

the Fact of such Desertion, and that the same was without reasonable Cause, and that the Wife is maintaining herself by her own Industry or Property, may make and give to the Wife an Order protecting her Earnings and Property acquired since the Commencement of such Desertion, from her Husband and all Creditors and Persons claiming under him, and such Earnings and Property shall belong to the Wife as if she were a Feme Solè: Provided always, that every such Order, if made by a Police Magistrate or Justices at Petty Sessions, shall, within Ten Days after the making thereof, be entered with the Registrar of the County Court within whose Jurisdiction the Wife is resident; and that it shall be lawful for the Husband, and any Creditor or other Person claiming under him, to apply to the Court, or to the Magistrate or Justices by whom such Order was made, for the Discharge thereof: Provided also, that if the Husband or any Creditor or Person claiming under the Husband shall seize or continue to hold any Property of the Wife after Notice of any such Order, he shall be liable, at the Suit of the Wife (which she is hereby empowered to bring), to restore the specific Property, and also for a Sum equal to double the Value of the Property so seized or held after such Notice as aforesaid: If any such Order of Protection be made, the Wife shall during the Continuance thereof be and be deemed to have been, during such Desertion of her, in the like Position in all respects, with regard to Property and Contracts, and suing and being sued, as she would be under this Act if she obtained a Decree of Judicial Separation.

Court
to act on
Principles of
the Eccle-
siastical
Courts.

XXII. In all Suits and Proceedings, other than Proceedings to dissolve any Marriage, the said Court shall proceed and act and give Relief on Principles and Rules which in the Opinion of the said Court shall be as nearly as may be conformable to the Principles and Rules on which the Ecclesiastical Courts have heretofore acted and given Relief, but subject to the Provisions herein contained and to the Rules and Orders under this Act.

Decree of
Separation
obtained
during the
Absence of
Husband or
Wife may be
reversed.

XXIII. Any Husband or Wife, upon the Application of whose Wife or Husband, as the Case may be, a Decree of Judicial Separation has been pronounced, may, at any Time thereafter, present a Petition to the Court praying for a Reversal of such Decree on the Ground that it was obtained in his or her Absence, and that there was reasonable Ground for the alleged Desertion, where Desertion was the Ground of such Decree; and the Court may, on being satisfied of the Truth of the Allegations of such Petition, reverse the Decree accordingly, but the Reversal thereof shall not prejudice or affect the Rights or Remedies which any other Person would have had in case such Reversal had not been decreed, in respect of any Debts, Contracts,

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Contracts, or Acts of the Wife incurred, entered into, or done between the Times of the Sentence of Separation and of the Reversal thereof.

XXIV. In all Cases in which the Court shall make any Decree or Order for Alimony, it may direct the same to be paid either to the Wife herself or to any Trustee on her Behalf, to be approved by the Court, and may impose any Terms or Restrictions which to the Court may seem expedient, and may from Time to Time appoint a new Trustee, if for any Reason it shall appear to the Court expedient so to do.

Court may direct Payment of Alimony to Wife or to her Trustee.

XXV. In every Case of a Judicial Separation the Wife shall, from the Date of the Sentence and whilst the Separation shall continue, be considered as a Feme Sole with respect to Property of every Description which she may acquire or which may come to or devolve upon her; and such Property may be disposed of by her in all respects as a Feme Sole, and on her Decease the same shall, in case she shall die intestate, go as the same would have gone if her Husband had been then dead; provided, that if any such Wife should again cohabit with her Husband, all such Property as she may be entitled to when such Cohabitation shall take place shall be held to her separate Use, subject, however, to any Agreement in Writing made between herself and her Husband whilst separate.

In case of Judicial Separation the Wife to be considered a Feme Sole with respect to Property she may acquire, &c.;

XXVI. In every Case of a Judicial Separation the Wife shall, whilst so separated, be considered as a Feme Sole for the Purposes of Contract, and Wrongs and Injuries, and suing and being sued in any Civil Proceeding; and her Husband shall not be liable in respect of any Engagement or Contract she may have entered into, or for any wrongful Act or Omission by her, or for any Costs she may incur as Plaintiff or Defendant; provided, that where upon any such Judicial Separation Alimony has been decreed or ordered to be paid to the Wife, and the same shall not be duly paid by the Husband, he shall be liable for Necessaries supplied for her Use; provided also, that nothing shall prevent the Wife from joining, at any Time during such Separation, in the Exercise of any joint Power given to herself and her Husband.

also, for Purposes of Contract and suing.

XXVII. It shall be lawful for any Husband to present a Petition to the said Court, praying that his Marriage may be dissolved, on the Ground that his Wife has since the Celebration thereof been guilty of Adultery; and it shall be lawful for any Wife to present a Petition to the said Court, praying that her Marriage may be dissolved, on the Ground that since the Celebration thereof her Husband has been guilty of incestuous Adultery, or of Bigamy with

On Adultery of Wife or Incest, &c. of Husband, Petition for Dissolution of Marriage may be presented.

Adultery,
asce

Divorce and Matrimonial Causes.

As to "Incestuous Adultery."

Adultery, or of Rape, or of Sodomy or Bestiality, or of Adultery coupled with such Cruelty as without Adultery would have entitled her to a Divorce *à Mensâ et Thoro*, or of Adultery coupled with Desertion, without reasonable Excuse, for Two Years or upwards; and every such Petition shall state as distinctly as the Nature of the Case permits the Facts on which the Claim to have such Marriage dissolved is founded: Provided that for the Purposes of this Act incestuous Adultery shall be taken to mean Adultery committed by a Husband with a Woman with whom if his Wife were dead he could not lawfully contract Marriage by reason of her being within the prohibited Degrees of Consanguinity or Affinity; and Bigamy shall be taken to mean Marriage of any Person, being married, to any other Person during the Life of the former Husband or Wife, whether the Second Marriage shall have taken place within the Dominions of Her Majesty or elsewhere.

Adulterer to be a Co-Respondent.

XXVIII. Upon any such Petition presented by a Husband the Petitioner shall make the alleged Adulterer a Co-Respondent to the said Petition, unless on special Grounds, to be allowed by the Court, he shall be excused from so doing; and on every Petition presented by a Wife for Dissolution of Marriage the Court, if it see fit, may direct that the Person with whom the Husband is alleged to have committed Adultery be made a Respondent; and the Parties or either of them may insist on having the contested Matters of Fact tried by a Jury as herein-after mentioned.

Cause may be tried by a Jury.

Court to be satisfied of Absence of Collusion.

XXIX. Upon any such Petition for the Dissolution of a Marriage, it shall be the Duty of the Court to satisfy itself, so far as it reasonably can, not only as to the Facts alleged, but also whether or no the Petitioner has been in any Manner accessory to or conniving at the Adultery, or has condoned the same, and shall also inquire into any Counter-charge which may be made against the Petitioner.

Dismissal of Petition.

XXX. In case the Court, on the Evidence in relation to any such Petition, shall not be satisfied that the alleged Adultery has been committed, or shall find that the Petitioner has during the Marriage been accessory to or conniving at the Adultery of the other Party to the Marriage, or has condoned the Adultery complained of, or that the Petition is presented or prosecuted in collusion with either of the Respondents, then and in any of the said Cases the Court shall dismiss the said Petition.

Power to Court to pronounce Decree for dissolving Marriage.

XXXI. In case the Court shall be satisfied on the Evidence that the Case of the Petitioner has been proved, and shall not find that the Petitioner has been in any Manner accessory to or conniving at the

the

Divorce and Matrimonial Causes.

the Adultery of the other Party to the Marriage, or has condoned the Adultery complained of, or that the Petition is presented or prosecuted in collusion with either of the Respondents, then the Court shall pronounce a Decree declaring such Marriage to be dissolved: Provided always, that the Court shall not be bound to pronounce such Decree if it shall find that the Petitioner has during the Marriage been guilty of Adultery, or if the Petitioner shall, in the Opinion of the Court, have been guilty of unreasonable Delay in presenting or prosecuting such Petition, or of Cruelty towards the other Party to the Marriage, or of having deserted or wilfully separated himself or herself from the other Party before the Adultery complained of, and without reasonable Excuse, or of such wilful Neglect or Misconduct as has conduced to the Adultery.

XXXII. The Court may, if it shall think fit, on any such Decree, order that the Husband shall to the Satisfaction of the Court secure to the Wife such gross Sum of Money, or such annual Sum of Money for any Term not exceeding her own Life, as, having regard to her Fortune (if any), to the Ability of the Husband, and to the Conduct of the Parties, it shall deem reasonable, and for that Purpose may refer it to any one of the Conveyancing Counsel of the Court of Chancery to settle and approve of a proper Deed or Instrument to be executed by all necessary Parties; and the said Court may in such Case, if it shall see fit, suspend the pronouncing of its Decree until such Deed shall have been duly executed; and upon any Petition for Dissolution of Marriage the Court shall have the same Power to make interim Orders for Payment of Money, by way of Alimony or otherwise, to the Wife, as it would have in a Suit instituted for Judicial Separation.

XXXIII. Any Husband may, either in a Petition for Dissolution of Marriage or for Judicial Separation, or in a Petition limited to such Object only, claim Damages from any Person on the Ground of his having committed Adultery with the Wife of such Petitioner, and such Petition shall be served on the alleged Adulterer and the Wife, unless the Court shall dispense with such Service, or direct some other Service to be substituted; and the Claim made by every such Petition shall be heard and tried on the same Principles, in the same Manner, and subject to the same or the like Rules and Regulations as Actions for Criminal Conversation are now tried and decided in Courts of Common Law; and all the Enactments herein contained with reference to the Hearing and Decision of Petitions to the Court shall, so far as may be necessary, be deemed applicable to the Hearing and Decision of Petitions presented under this Enactment; and the Damages to be recovered on any such Petition shall in all Cases be

Husband
may claim
Damages
from Adul-
terers.

Divorce and Matrimonial Causes.

ascertained by the Verdict of a Jury, although the Respondents or either of them may not appear; and after the Verdict has been given the Court shall have Power to direct in what Manner such Damages shall be paid or applied, and to direct that the whole or any Part thereof shall be settled for the Benefit of the Children (if any) of the Marriage, or as a Provision for the Maintenance of the Wife.

Power to
Court to
order Adul-
terer to pay
Costs.

XXXIV. Whenever in any Petition presented by a Husband the alleged Adulterer shall have been made a Co-Respondent, and the Adultery shall have been established, it shall be lawful for the Court to order the Adulterer to pay the whole or any Part of the Costs of the Proceedings.

Power to
Court to
make Orders
as to Cus-
tody of
Children.

XXXV. In any Suit or other Proceeding for obtaining a Judicial Separation or a Decree of Nullity of Marriage, and on any Petition for dissolving a Marriage, the Court may from Time to Time, before making its final Decree, make such interim Orders, and may make such Provision in the final Decree, as it may deem just and proper with respect to the Custody, Maintenance, and Education of the Children the Marriage of whose Parents is the Subject of such Suit or other Proceeding, and may, if it shall think fit, direct proper Proceedings to be taken for placing such Children under the Protection of the Court of Chancery.

Questions of
Fact may
be tried
before the
Court.

XXXVI. In Questions of Fact arising in Proceedings under this Act it shall be lawful for, but, except as herein-before provided, not obligatory upon, the Court to direct the Truth thereof to be determined before itself, or before any One or more of the Judges of the said Court, by the Verdict of a Special or Common Jury.

Where a
Question is
ordered to be
tried a Jury
may be sum-
moned as in
the Common
Law Courts.

XXXVII. The Court, or any Judge thereof, may make all such Rules and Orders upon the Sheriff or any other Person for procuring the Attendance of a Special or Common Jury for the Trial of such Question as may now be made by any of the Superior Courts of Common Law at *Westminster*, and may also make any other Orders which to such Court or Judge may seem requisite; and every such Jury shall consist of Persons possessing the like Qualifications, and shall be struck, summoned, balloted for, and called in like Manner, as if such Jury were a Jury for the Trial of any Cause in any of the said Superior Courts; and every Juryman so summoned shall be entitled to the same Rights, and subject to the same Duties and Liabilities, as if he had been duly summoned for the Trial of any such Cause in any of the said Superior Courts; and every Party to any such Proceeding shall be entitled to the same Rights as to Challenge and otherwise as if he were a Party to any such Cause.

Rights to
Challenge.

XXXVIII. When

Divorce and Matrimonial Causes.

XXXVIII. When any such Question shall be so ordered to be tried such Question shall be reduced into Writing in such Form as the Court shall direct; and at the Trial the Jury shall be sworn to try the said Question, and a true Verdict to give thereon according to the Evidence; and upon every such Trial the Court or Judge shall have the same Powers, Jurisdiction, and Authority as any Judge of any of the said Superior Courts sitting at Nisi Prius.

Such Question to be reduced into Writing, and a Jury to be sworn to try it.

Judge to have same Powers as at Nisi Prius.

XXXIX. Upon the Trial of any such Question or of any Issue under this Act a Bill of Exceptions may be tendered, and a General or Special Verdict or Verdicts; subject to a Special Case, may be returned, in like Manner as in any Cause tried in any of the said Superior Courts; and every such Bill of Exceptions, Special Verdict, and Special Case respectively shall be stated, settled, and sealed in like Manner as in any Cause tried in any of the said Superior Courts, and where the Trial shall not have been had in the Court for Divorce and Matrimonial Causes shall be returned into such Court without any Writ of Error or other Writ; and the Matter of Law in every such Bill of Exceptions, Special Verdict, and Special Case shall be heard and determined by the full Courts, subject to such Right of Appeal as is herein-after given in other Cases.

Bill of Exceptions, Special Verdict, and Special Case.

XL. It shall be lawful for the Court to direct One or more Issue or Issues to be tried in any Court of Common Law, and either before a Judge of Assize in any County or at the Sittings for the Trial of Causes in *London* or *Middlesex*, and either by a Special or Common Jury, in like Manner as is now done by the Court of Chancery.

Court may direct Issues to try any Fact.

XLI. Every Person seeking a Decree of Nullity of Marriage, or a Decree of Judicial Separation, or a Dissolution of Marriage, or Decree in a Suit of Jactitation of Marriage, shall, together with the Petition or other Application for the same, file an Affidavit verifying the same so far as he or she is able to do so, and stating that there is not any Collusion or Connivance between the Deponent and the other Party to the Marriage.

Affidavit in support of a Petition.

XLII. Every such Petition shall be served on the Party to be affected thereby, either within or without Her Majesty's Dominions, in such Manner as the Court shall by any General or Special Order from Time to Time direct, and for that Purpose the Court shall have all the Powers conferred by any Statute on the Court of Chancery: Provided always, that the said Court may dispense with such Service altogether in case it shall seem necessary or expedient so to do.

Service of Petition.

XLIII. The

Divorce and Matrimonial Causes.

Examination
of Petitioner.

XLIII. The Court may, if it shall think fit, order the Attendance of the Petitioner, and may examine him or her, or permit him or her to be examined or cross-examined on Oath on the Hearing of any Petition, but no such Petitioner shall be bound to answer any Question tending to show that he or she has been guilty of Adultery.

Adjourn-
ment.

XLIV. The Court may from Time to Time adjourn the Hearing of any such Petition, and may require further Evidence thereon, if it shall see fit so to do.

Court may
order Settle-
ment of Pro-
perty for
Benefit of
innocent
Party and
Children of
Marriage.

XLV. In any Case in which the Court shall pronounce a Sentence of Divorce or Judicial Separation for Adultery of the Wife, if it shall be made appear to the Court that the Wife is entitled to any Property either in possession or reversion, it shall be lawful for the Court, if it shall think proper, to order such Settlement as it shall think reasonable to be made of such Property or any Part thereof, for the Benefit of the innocent Party, and of the Children of the Marriage, or either or any of them.

Mode of
taking
Evidence.

XLVI. Subject to such Rules and Regulations as may be established as herein provided, the Witnesses in all Proceedings before the Court where their Attendance can be had shall be sworn and examined orally in open Court: Provided that Parties, except as herein-before provided, shall be at liberty to verify their respective Cases in whole or in part by Affidavit, but so that the Deponent in every such Affidavit shall, on the Application of the opposite Party or by Direction of the Court, be subject to be cross-examined by or on behalf of the opposite Party orally in open Court, and after such Cross-examination may be re-examined orally in open Court as aforesaid by or on behalf of the Party by whom such Affidavit was filed.

Court may
issue Com-
missions or
give Orders
for Exami-
nation of
Witnesses
abroad or
unable to
attend.

XLVII. Provided, That where a Witness is out of the Jurisdiction of the Court, or where, by reason of his Illness or from other Circumstances, the Court shall not think fit to enforce the Attendance of the Witness in open Court, it shall be lawful for the Court to order a Commission to issue for the Examination of such Witness on Oath, upon Interrogatories or otherwise, or if the Witness be within the Jurisdiction of the Court to order the Examination of such Witness on Oath, upon Interrogatories or otherwise, before any Officer of the said Court, or other Person to be named in such Order for the Purpose; and all the Powers given to the Courts of Law at *Westminster* by the Acts of the Thirteenth Year of King *George* the Third, Chapter Sixty-three, and of the First Year of King *William* the Fourth, Chapter Twenty-two, for enabling the Courts of Law at

Westminster

Divorce and Matrimonial Causes.

Westminster to issue Commissions and give Orders for the Examination of Witnesses in Actions depending in such Courts; and to enforce such Examination, and all the Provisions of the said Acts, and of any other Acts for enforcing or otherwise applicable to such Examination and the Witnesses examined, shall extend and be applicable to the Court and to the Examination of Witnesses under the Commissions and Orders of the said Court, and to the Witnesses examined, as if such Court were One of the Courts of Law at *Westminster*, and the Matter before it were an Action pending in such Court.

XLVIII. The Rules of Evidence observed in the Superior Courts of Common Law at *Westminster* shall be applicable to and observed in the Trial of all Questions of Fact in the Court.

Rules of Evidence in Common Law Courts to be observed.

XLIX. The Court may, under its Seal, issue Writs of Subpœna or Subpœna duces tecum, commanding the Attendance of Witnesses at such Time and Place as shall be therein expressed; and such Writs may be served in any Part of *Great Britain* or *Ireland*; and every Person served with such Writ shall be bound to attend, and to be sworn and give Evidence in obedience thereto, in the same Manner as if it had been a Writ of Subpœna or Subpœna duces tecum issued from any of the said Superior Courts of Common Law in a Cause pending therein, and served in *Great Britain* or *Ireland*, as the Case may be: Provided that any Petitioner required to be examined, or any Person called as a Witness or required or desiring to make an Affidavit or Deposition under or for the Purposes of this Act, shall be permitted to make his solemn Affirmation or Declaration instead of being sworn in the Circumstances and Manner in which a Person called as a Witness or desiring to make an Affidavit or Deposition would be permitted so to do under the "Common Law Procedure Act, 1854," in Cases within the Provisions of that Act.

Attendance of Witnesses on the Court.

L. All Persons wilfully deposing or affirming falsely in any Proceeding before the Court shall be deemed to be guilty of Perjury, and shall be liable to all the Pains and Penalties attached thereto.

Penalties for false Evidence.

LI. The Court on the Hearing of any Suit, Proceeding, or Petition under this Act, and the House of Lords on the Hearing of any Appeal under this Act, may make such Order as to Costs as to such Court or House respectively may seem just: Provided always, that there shall be no Appeal on the Subject of Costs only.

Costs.

Divorce and Matrimonial Causes.

Enforcement
of Orders
and Decrees.

LII. All Decrees and Orders to be made by the Court in any Suit, Proceeding, or Petition to be instituted under Authority of this Act shall be enforced and put in execution in the same or the like Manner as the Judgments, Orders, and Decrees of the High Court of Chancery may be now enforced and put in execution.

Power to
make Rules,
&c. for Pro-
cedure, and
to alter them
from Time
to Time.

LIII. The Court shall make such Rules and Regulations concerning the Practice and Procedure under this Act as it may from Time to Time consider expedient, and shall have full Power from Time to Time to revoke or alter the same.

Fees to be
regulated.

LIV. The Court shall have full Power to fix and regulate from Time to Time the Fees payable upon all Proceedings before it, all which Fees shall be received, paid, and applied as herein directed: Provided always, that the said Court may make such Rules and Regulations as it may deem necessary and expedient for enabling Persons to sue in the said Court *in forma pauperis*.

Appeal from
the Judge
Ordinary to
the full
Court.

LV. Either Party dissatisfied with any Decision of the Court in any Matter which, according to the Provisions aforesaid, may be made by the Judge Ordinary alone, may, within Three Calendar Months after the pronouncing thereof, appeal therefrom to the full Court, whose Decision shall be final.

Appeal to
the House of
Lords in
case of
Petition for
Dissolution
of a Mar-
riage.

LVI. Either Party dissatisfied with the Decision of the full Court on any Petition for the Dissolution of a Marriage may, within Three Months after the pronouncing thereof, appeal therefrom to the House of Lords if Parliament be then sitting, or if Parliament be not sitting at the End of such Three Months, then within Fourteen Days next after its meeting; and on the Hearing of any such Appeal the House of Lords may either dismiss the Appeal or reverse the Decree, or remit the Case to the Court, to be dealt with in all respects as the House of Lords shall direct.

Liberty to
Parties to
marry again.

LVII. When the Time hereby limited for appealing against any Decree dissolving a Marriage shall have expired, and no Appeal shall have been presented against such Decree, or when any such Appeal shall have been dismissed, or when in the Result of any Appeal any Marriage shall be declared to be dissolved, but not sooner, it shall be lawful for the respective Parties thereto to marry again, as if the prior Marriage had been dissolved by Death: Provided always, that no Clergyman in Holy Orders of the United Church of *England* and *Ireland* shall be compelled to solemnize the Marriage of any Person whose former Marriage may have been dissolved on the Ground of

No Clergy-
man com-
pelled to
solemnize
certain Mar-
riages.

his

Divorce and Matrimonial Causes.

his or her Adultery, or shall be liable to any Suit, Penalty, or Censure for solemnizing or refusing to solemnize the Marriage of any such Person.

LVIII. Provided always, That when any Minister of any Church or Chapel of the United Church of *England* and *Ireland* shall refuse to perform such Marriage Service between any Persons who but for such Refusal would be entitled to have the same Service performed in such Church or Chapel, such Minister shall permit any other Minister in Holy Orders of the said United Church, entitled to officiate within the Diocese in which such Church or Chapel is situate, to perform such Marriage Service in such Church or Chapel.

If Minister of any Church, &c. refuses to perform Marriage Ceremony, any other Minister may perform such Service.

LIX. After this Act shall have come into operation no Action shall be maintainable in *England* for Criminal Conversation.

No Action in *England* for Criminal Conversation.

LX. None of the Fees payable under this Act, except as herein expressly provided, shall be received in Money, but every such Fee shall be collected and received by a Stamp denoting the Amount of the Fee which would otherwise be payable; and the Fees to be so collected by Stamps shall be "Stamp Duties," and be under the Management of the Commissioners of Inland Revenue:

All Fees, except as herein provided, to be collected by Stamps.

LXI. The Provisions contained in or referred to by an Act of the present Session of Parliament, "to amend the Laws relating to Probates and Letters of Administration in *England*," and applicable to the Collection and Payment and Accounts of the Fees to be received thereunder by means of Stamps, and to such Stamps, and the Vellum, Parchment, or Paper on or to which the same shall be impressed or affixed, and in relation to Documents which ought to have Stamps impressed thereon or affixed thereto, and to the Punishment of Persons for such wrongful Acts as therein mentioned in relation to Stamps, or Fees or Sums of Money which ought to be collected by means of Stamps, shall be applicable to and for the Purposes of this Act, as if such Provisions as aforesaid had been contained or referred to in this Act with reference to the like Matters, and the Court under this Act had been mentioned, instead of the Court of Probate, or the Judge thereof, as the Case may be.

Provisions concerning Stamps for the Court of Probate to be applicable to the Purposes of this Act.

LXII. It shall be lawful for the Commissioners of Her Majesty's Treasury, out of such Monies as may be provided and appropriated by Parliament for the Purpose, to cause to be paid all necessary Expenses of the Court under this Act, and other Expenses which may be incurred in carrying the Provisions of this Act into effect, except as herein otherwise provided.

Expenses of the Court to be paid out of Monies to be provided by Parlia-

LXIII. The

Divorce and Matrimonial Causes.

Stamp Duty
on Admis-
sion of
Proctors,
and annual
Certificates.

LXIII. The same Amount of Stamp Duty as is now payable on the Admission of a Proctor to any Ecclesiastical Court shall be payable by every Person to be admitted as a Proctor in the Court of Divorce and Matrimonial Causes, or in the Court of Probate, who shall not have been previously admitted as a Proctor in the other of such Courts, or in an Ecclesiastical or Admiralty Court, and have paid the Stamp Duty in respect thereof; and every Person who shall practise as a Proctor or as a Solicitor or Attorney in the said Court of Divorce and Matrimonial Causes, or the said Court of Probate, shall obtain an annual Certificate to authorize him so to do, under the Stamp Duty Acts, in the same Manner as Proctors practising in the Ecclesiastical or Admiralty Courts, and Solicitors and Attornies practising in Her Majesty's Courts at *Westminster*, are now required to do by the said Acts or any of them, and shall be subject, and liable to the same Penalties and Disabilities in case of any Neglect to obtain such Certificates as such Proctors, Attornies, and Solicitors are now subject and liable to for any similar Neglect, and as if the Clauses and Provisions of the said Acts in relation to such Certificates had been inserted in this Act, and specially enacted in reference to Proctors, Solicitors, and Attornies practising in the said Court of Divorce and Matrimonial Causes and Court of Probate, provided that One annual Certificate only shall be required for any one Person, although he may practise in more than One of the Capacities aforesaid, or in several of the Courts herein-before mentioned.

Compensa-
tion to Proc-
tors.

LXIV. Every Person who at the Time of the passing of this Act has been duly admitted and is practising as a Proctor in any Ecclesiastical Court in *England* shall, at the Expiration of Two Years from and after the Commencement of this Act, be entitled to make a Claim for Compensation to the Commissioners of Her Majesty's Treasury; and the said Commissioners, by Examination of Evidence on Oath (which they are hereby empowered to administer), or otherwise, as they shall think fit, shall inquire into and ascertain the Loss, if any, of Professional Gains and Profits in respect of Suits relating to Marriage and Divorce sustained by such Proctors respectively, upon a Comparison in each Case of the average clear Gains of the Three Years immediately before the Commencement of this Act, arising from such last-mentioned Business, and the Average of the same Gains during the Two Years immediately succeeding the Commencement of this Act; and the said Commissioners shall in each Case, having regard to all the Circumstances, award a reasonable Compensation, by way of Annuity, to the Persons sustaining such Loss, during their Lives, but in no Case shall such Annuity exceed One Half of the annual Loss so ascertained as aforesaid; and such Annuities shall be paid out of Monies to be annually provided by Parliament

20° & 21° VICTORIÆ, Cap. 85.

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Divorce and Matrimonial Causes.

Parliament for that Purpose, and the Persons receiving the same shall be subject to the Provisions contained in the Nineteenth Section of the Act of Fourth and Fifth *William* the Fourth, Chapter Twenty-four.

LXV. In case the Judge of the Court of Probate established by any Act passed during the present Session shall be appointed Judge Ordinary of the Court for Divorce and Matrimonial Causes, the Salary of such Judge shall be the Sum of Five thousand Pounds *per Annum*; but such Judge, if afterwards appointed Judge of the Admiralty Court, shall not be entitled to any Increase of Salary.

As to Salary of Judge of Court of Probate, if appointed Judge of Court of Divorce, &c.

LXVI. Any One of Her Majesty's Principal Secretaries of State may order every Judge, Registrar, or other Officer of any Ecclesiastical Court in *England* or the *Isle of Man*, or any other Person having the public Custody of or Control over any Letters Patent, Records, Deeds, Processes, Acts, Proceedings, Books, Documents, or other Instrument relating to Marriages, or to Suits for Divorce, Nullity of Marriage, Restitution of Conjugal Rights, or to any other Matters or Causes Matrimonial, except Marriage Licences, to transmit the same, at such Times and in such Manner, to such Places in *London* or *Westminster*, and under such Regulations, as the said Secretary of State may appoint; and if any Judge, Registrar, Officer, or other Person shall wilfully disobey such Order he shall for the First Offence forfeit the Sum of One hundred Pounds, to be recoverable by any Registrar of the Court of Probate as a Debt under this Act in any of the Superior Courts at *Westminster*, and for the Second and subsequent Offences the Judge Ordinary may commit the Person so offending to Prison for any Period not exceeding Three Calendar Months, provided that the Warrant of Committal be countersigned by One of Her Majesty's Principal Secretaries of State, and the said Persons so offending shall forfeit all Claim to Compensation under this Act.

Power to Secretary of State to order all Letters Patent, Records, &c. to be transmitted from all Ecclesiastical Courts.

Penalty on disobeying such Order.

LXVII. All Rules and Regulations concerning Practice or Procedure, or fixing or regulating Fees, which may be made by the Court under this Act, shall be laid before both Houses of Parliament within One Month after the making thereof, if Parliament be then sitting, or if Parliament be not then sitting, within One Month after the Commencement of the then next Session of Parliament.

Rules, &c. to be laid before Parliament.

LXVIII. The Judge Ordinary of the Court for Divorce and Matrimonial Causes for the Time being shall cause to be prepared in each Year ending *December* Thirty-one a Return of all Fees and Monies levied in such Year on account of the Fee Fund of the Court of

Yearly Account of Fees, &c. to be laid before Parliament.

Divorce and Matrimonial Causes.

Divorce and Matrimonial Causes, and of any other Fund under the Authority of this Act; also, a Return of the annual Salaries of the said Judge Ordinary, and of all Persons holding Offices in the said Court, with all the incidental Expenses of the said Court, whether the Salaries and incidental Expenses aforesaid be defrayed out of Fees or out of any other Monies; also, a Return of all Superannuations, Pensions, Annuities, retiring Allowances, and Compensations made payable under this Act, in each Year, stating the gross Amount, and the Amount in detail, of such Charges: Provided always, that all such Returns as aforesaid shall be presented to both Houses of Parliament on or before the Thirty-first Day of *March* in each Year, if Parliament is then sitting, and if Parliament is not sitting, then such Returns shall be presented within One Month of the First Meeting of Parliament after the Thirty-first Day of *March* in each Year.

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CANADA

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CODIFICATION

Federal Child Support Guidelines

Lignes directrices fédérales sur les pensions alimentaires pour enfants

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FEDERAL CHILD SUPPORT
GUIDELINES

LIGNES DIRECTRICES FÉDÉRALES
SUR LES PENSIONS
ALIMENTAIRES POUR ENFANTS

OBJECTIVES

OBJECTIFS

Objectives

1. The objectives of these Guidelines are

- (a) to establish a fair standard of support for children that ensures that they continue to benefit from the financial means of both spouses after separation;
- (b) to reduce conflict and tension between spouses by making the calculation of child support orders more objective;
- (c) to improve the efficiency of the legal process by giving courts and spouses guidance in setting the levels of child support orders and encouraging settlement; and
- (d) to ensure consistent treatment of spouses and children who are in similar circumstances.

1. Les présentes lignes directrices visent à :

- a) établir des normes équitables en matière de soutien alimentaire des enfants afin de leur permettre de continuer de bénéficier des ressources financières des époux après leur séparation;
- b) réduire les conflits et les tensions entre époux en rendant le calcul du montant des ordonnances alimentaires plus objectif;
- c) améliorer l'efficacité du processus judiciaire en guidant les tribunaux et les époux dans la détermination du montant de telles ordonnances et en favorisant le règlement des affaires;
- d) assurer un traitement uniforme des époux et enfants qui se trouvent dans des situations semblables les unes aux autres.

Objectifs

INTERPRETATION

DÉFINITIONS ET INTERPRÉTATION

Definitions

2. (1) The definitions in this subsection apply in these Guidelines.

“Act”
« Loi »

“Act” means the *Divorce Act*.

“child”
« enfant »

“child” means a child of the marriage.

“income”
« revenu »

“income” means the annual income determined under sections 15 to 20.

“order assignee”
« cessionnaire
de la créance
alimentaire »

“order assignee” means a minister, member or agency referred to in subsection 20.1(1) of the Act to whom a child support order is assigned in accordance with that subsection.

2. (1) Les définitions qui suivent s'appliquent aux présentes lignes directrices.

« cessionnaire de la créance alimentaire »
Le ministre, le membre ou l'administration à qui la créance alimentaire octroyée par une ordonnance alimentaire a été cédée en vertu du paragraphe 20.1(1) de la Loi.

« enfant » Enfant à charge.

« époux » S'entend au sens du paragraphe 2(1) de la Loi et, en outre, d'un ex-époux.

« Loi » *La Loi sur le divorce*.

« ordonnance alimentaire » Ordonnance alimentaire au profit d'un enfant.

Définitions

« cessionnaire
de la créance
alimentaire »
“order assignee”

« enfant »
“child”

« époux »
“spouse”

« Loi »
“Act”

« ordonnance
alimentaire »
“French version
only”

AMOUNT OF CHILD SUPPORT

MONTANT DE L'ORDONNANCE
ALIMENTAIRE

Presumptive rule

3. (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is

(a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and

(b) the amount, if any, determined under section 7.

Child the age of majority or over

(2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is

(a) the amount determined by applying these Guidelines as if the child were under the age of majority; or

(b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

Applicable table

(3) The applicable table is

(a) if the spouse against whom an order is sought resides in Canada,

(i) the table for the province in which that spouse ordinarily resides at the time the application for the child support order, or for a variation order in respect of a child support order, is made or the amount is to be recalculated under section 25.1 of the Act,

Règle générale

3. (1) Sauf disposition contraire des présentes lignes directrices, le montant de l'ordonnance alimentaire à l'égard d'enfants mineurs est égal à la somme des montants suivants :

a) le montant prévu dans la table applicable, selon le nombre d'enfants mineurs visés par l'ordonnance et le revenu de l'époux faisant l'objet de la demande;

b) le cas échéant, le montant déterminé en application de l'article 7.

Enfant majeur

(2) Sauf disposition contraire des présentes lignes directrices, le montant de l'ordonnance alimentaire à l'égard d'un enfant majeur visé par l'ordonnance est :

a) le montant déterminé en application des présentes lignes directrices comme si l'enfant était mineur;

b) si le tribunal est d'avis que cette approche n'est pas indiquée, tout montant qu'il juge indiqué compte tenu des ressources, des besoins et, d'une façon générale, de la situation de l'enfant, ainsi que de la capacité financière de chaque époux de contribuer au soutien alimentaire de l'enfant.

Table applicable

(3) La table applicable est :

a) si l'époux faisant l'objet de la demande d'ordonnance alimentaire réside au Canada :

(i) la table de la province où il réside habituellement à la date à laquelle la demande d'ordonnance ou la demande de modification de celle-ci est présentée ou à la date à laquelle le nouveau montant de l'ordonnance doit être fixé

number of children under the age of majority to whom the order relates;

(ii) in respect of the balance of the spouse's income, the amount that the court considers appropriate, having regard to the condition, means, needs and other circumstances of the children who are entitled to support and the financial ability of each spouse to contribute to the support of the children; and

(iii) the amount, if any, determined under section 7.

(ii) pour l'excédent, tout montant que le tribunal juge indiqué compte tenu des ressources, des besoins et, d'une façon générale, de la situation des enfants en cause, ainsi que de la capacité financière de chaque époux de contribuer à leur soutien alimentaire,

(iii) le cas échéant, le montant déterminé en application de l'article 7.

Spouse in place of a parent

5. Where the spouse against whom a child support order is sought stands in the place of a parent for a child, the amount of a child support order is, in respect of that spouse, such amount as the court considers appropriate, having regard to these Guidelines and any other parent's legal duty to support the child.

5. Si l'époux faisant l'objet de la demande d'ordonnance alimentaire tient lieu de père ou de mère à l'égard d'un enfant, le montant de l'ordonnance pour cet époux est le montant que le tribunal juge indiqué compte tenu des présentes lignes directrices et de toute autre obligation légale qu'a un autre père ou mère pour le soutien alimentaire de l'enfant.

Époux tenant lieu de père ou de mère

Medical and dental insurance

6. In making a child support order, where medical or dental insurance coverage for the child is available to either spouse through his or her employer or otherwise at a reasonable rate, the court may order that coverage be acquired or continued.

6. En rendant l'ordonnance alimentaire, le tribunal peut enjoindre à l'un des époux de contracter ou de maintenir une assurance médicale ou dentaire au profit de l'enfant, si une telle assurance est disponible par l'entremise de l'employeur de l'époux ou autrement à un taux raisonnable.

Assurance médicale et dentaire

Special or extraordinary expenses

7. (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

7. (1) Le tribunal peut, sur demande de l'un des époux, prévoir dans l'ordonnance alimentaire une somme, qui peut être estimative, pour couvrir tout ou partie des frais ci-après, compte tenu de leur nécessité par rapport à l'intérêt de l'enfant et de leur caractère raisonnable par rapport aux ressources des époux et de l'enfant et aux habitudes de dépenses de la famille avant la séparation :

Dépenses spéciales ou extraordinaires

the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or

(b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account

(i) the amount of the expense in relation to the income of the spouse requesting the amount; including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,

(ii) the nature and number of the educational programs and extracurricular activities,

(iii) any special needs and talents of the child or children,

(iv) the overall cost of the programs and activities, and

(v) any other similar factor that the court considers relevant.

Sharing of
expense

(2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.

Subsidies, tax
deductions, etc.

(3) Subject to subsection (4), in determining the amount of an expense referred to in subsection (1), the court must take into account any subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense.

de la somme que le tribunal juge indiquée;

b) si l'alinéa a) ne s'applique pas, des frais que le tribunal considère comme extraordinaires, compte tenu :

(i) de leur montant par rapport au revenu de l'époux demandant une somme pour ces frais, y compris celle qu'il recevrait en vertu de la table applicable ou, si le tribunal statue que cette somme ne convient pas, de la somme que le tribunal juge indiquée,

(ii) de la nature et du nombre de programmes éducatifs et des activités parascolaires,

(iii) des besoins particuliers et des talents de l'enfant,

(iv) du coût global des programmes et des activités,

(v) des autres facteurs similaires que le tribunal estime pertinents.

(2) La détermination du montant des dépenses aux termes du paragraphe (1) procède du principe qu'elles sont partagées en proportion du revenu de chaque époux, déduction faite de la contribution fournie par l'enfant, le cas échéant.

Partage des
dépenses

(3) Sous réserve du paragraphe (4), lorsqu'il calcule le montant des dépenses visées au paragraphe (1), le tribunal tient compte de tout avantage ou subvention, ou déduction ou crédit d'impôt, relatifs aux dépenses, ou de l'admissibilité à ceux-ci.

Avantage,
subvention, ou
déduction ou
crédit d'impôt

(a) the spouse has responsibility for an unusually high level of debts reasonably incurred to support the spouses and their children prior to the separation or to earn a living;

(b) the spouse has unusually high expenses in relation to exercising access to a child;

(c) the spouse has a legal duty under a judgment, order or written separation agreement to support any person;

(d) the spouse has a legal duty to support a child, other than a child of the marriage, who is

(i) under the age of majority, or

(ii) the age of majority or over but is unable, by reason of illness, disability or other cause, to obtain the necessities of life; and

(e) the spouse has a legal duty to support any person who is unable to obtain the necessities of life due to an illness or disability.

(3) Despite a determination of undue hardship under subsection (1), an application under that subsection must be denied by the court if it is of the opinion that the household of the spouse who claims undue hardship would, after determining the amount of child support under any of sections 3 to 5, 8 or 9, have a higher standard of living than the household of the other spouse.

(4) In comparing standards of living for the purpose of subsection (3), the court may use the comparison of household standards of living test set out in Schedule II.

époux pour soutenir les époux et les enfants avant la séparation ou pour gagner un revenu;

b) des frais anormalement élevés liés à l'exercice par un époux du droit d'accès auprès des enfants;

c) des obligations légales d'un époux découlant d'un jugement, d'une ordonnance ou d'une entente de séparation écrite pour le soutien alimentaire de toute personne;

d) des obligations légales d'un époux pour le soutien alimentaire d'un enfant, autre qu'un enfant à charge, qui :

(i) n'est pas majeur,

(ii) est majeur, sans pouvoir, pour cause notamment de maladie ou d'invalidité, subvenir à ses propres besoins;

e) des obligations légales d'un époux pour le soutien alimentaire de toute personne qui ne peut subvenir à ses propres besoins pour cause de maladie ou d'invalidité.

(3) Même s'il conclut à l'existence de difficultés excessives, le tribunal doit rejeter la demande faite en application du paragraphe (1) s'il est d'avis que le ménage de l'époux qui les invoque aurait, par suite de la détermination du montant de l'ordonnance alimentaire en application des articles 3 à 5, 8 et 9, un niveau de vie plus élevé que celui du ménage de l'autre époux.

(4) Afin de comparer les niveaux de vie des ménages visés au paragraphe (3), le tribunal peut utiliser la méthode prévue à l'annexe II.

Standards of living must be considered

Niveaux de vie

Standards of living test

Méthode de comparaison des niveaux de vie

(e) the particulars of any expense described in subsection 7(1), the child to whom the expense relates, and the amount of the expense or, where that amount cannot be determined, the proportion to be paid in relation to the expense; and

(f) the date on which the lump sum or first payment is payable and the day of the month or other time period on which all subsequent payments are to be made.

VARIATION OF CHILD SUPPORT ORDERS

Circumstances
for variation

14. For the purposes of subsection 17(4) of the Act, any one of the following constitutes a change of circumstances that gives rise to the making of a variation order in respect of a child support order:

(a) in the case where the amount of child support includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child support order or any provision thereof;

(b) in the case where the amount of child support does not include a determination made in accordance with a table, any change in the condition, means, needs or other circumstances of either spouse or of any child who is entitled to support; and

(c) in the case of an order made before May 1, 1997, the coming into force of section 15.1 of the Act, enacted by section 2 of chapter 1 of the Statutes of Canada, (1997).

SOR/97-563, s. 2; SOR/2000-337, s. 2.

elles se rapportent et leur montant ou, si celui-ci ne peut être déterminé, la proportion à payer;

f) la date à laquelle le capital ou le premier paiement de la pension est payable et le jour du mois — ou de toute autre période — où les paiements subséquents doivent être faits.

MODIFICATION DE L'ORDONNANCE ALIMENTAIRE

Changements de
situation

14. Pour l'application du paragraphe 17(4) de la Loi, l'un ou l'autre des changements ci-après constitue un changement de situation au titre duquel une ordonnance alimentaire modificative peut être rendue :

a) dans le cas d'une ordonnance alimentaire dont tout ou partie du montant a été déterminé selon la table applicable, tout changement qui amènerait une modification de l'ordonnance ou de telle de ses dispositions;

b) dans le cas d'une ordonnance alimentaire dont le montant n'a pas été déterminé selon une table, tout changement dans les ressources, les besoins ou, d'une façon générale, dans la situation de l'un ou l'autre des époux ou de tout enfant ayant droit à une pension alimentaire;

c) dans le cas d'une ordonnance rendue avant le 1^{er} mai 1997, l'entrée en vigueur de l'article 15.1 de la Loi, édicté par l'article 2 du chapitre 1 des Lois du Canada (1997).

DORS/97-563, art. 2; DORS/2000-337, art. 2.

penses and carrying charges and interest expenses, to arrive at such amount as the court considers appropriate.

SOR/2000-337, s. 4.

Shareholder,
director or
officer

18. (1) Where a spouse is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the spouse's annual income as determined under section 16 does not fairly reflect all the money available to the spouse for the payment of child support, the court may consider the situations described in section 17 and determine the spouse's annual income to include

(a) all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year; or

(b) an amount commensurate with the services that the spouse provides to the corporation, provided that the amount does not exceed the corporation's pre-tax income.

Adjustment to
corporation's
pre-tax income

(2) In determining the pre-tax income of a corporation for the purposes of subsection (1), all amounts paid by the corporation as salaries, wages or management fees, or other payments or benefits, to or on behalf of persons with whom the corporation does not deal at arm's length must be added to the pre-tax income, unless the spouse establishes that the payments were reasonable in the circumstances.

Imputing
income

19. (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

(a) the spouse is intentionally underemployed or unemployed, other than

rêt, de la façon qu'il juge indiquée, au lieu de le faire en application des articles 6 ou 7 de l'annexe III.

DORS/2000-337, art. 4.

Actionnaires,
administrateurs
ou dirigeants

18. (1) Si l'époux est un actionnaire, administrateur ou dirigeant d'une société, le tribunal peut, s'il est d'avis que son revenu annuel déterminé conformément à l'article 16 ne correspond pas fidèlement aux sommes disponibles pour payer une pension alimentaire pour enfants, tenir compte des situations visées à l'article 17 et inclure dans le revenu annuel :

a) soit tout ou partie du montant de profit avant impôt de la société, et de toutes autres sociétés avec lesquelles elle est liée, pour la dernière année d'imposition;

b) soit un montant correspondant à la valeur des services qu'il fournit à la société, jusqu'à concurrence du montant de profit avant impôt de celle-ci.

Rajustement du
profit avant
impôt

(2) Aux fins de la détermination du profit avant impôt d'une société en application du paragraphe (1), les montants qu'elle paie, au titre notamment des salaires, rémunérations, frais de gestion ou avantages, aux personnes avec lesquelles elle a un lien de dépendance, ou au nom de celles-ci, sont ajoutés au profit avant impôt de la société, à moins que l'époux n'établisse qu'ils sont raisonnables dans les circonstances.

Attribution de
revenu

19. (1) Le tribunal peut attribuer à l'époux le montant de revenu qu'il juge indiqué, notamment dans les cas suivants :

a) l'époux a choisi de ne pas travailler ou d'être sous-employé, sauf s'il a fait un tel choix lorsque l'exigent les besoins

Non-resident

20. (1) Subject to subsection (2), where a spouse is a non-resident of Canada, the spouse's annual income is determined as though the spouse were a resident of Canada.

20. (1) Le revenu annuel de l'époux qui ne réside pas au Canada est déterminé comme s'il y résidait.

Non-résident

Non-resident
taxed at higher
rates

(2) Where a spouse is a non-resident of Canada and resides in a country that has effective rates of income tax that are significantly higher than those applicable in the province in which the other spouse ordinarily resides, the spouse's annual income is the amount that the court determines to be appropriate taking those rates into consideration.

(2) Toutefois, si l'époux réside dans un pays où les taux d'imposition effectifs sont substantiellement supérieurs à ceux applicables dans la province où l'autre époux réside habituellement, son revenu annuel est celui que le tribunal juge indiqué compte tenu de ces taux.

Taux
d'imposition
effectifs
supérieurs

SOR/2005-400, s. 2.

DORS/2005-400, art. 2.

INCOME INFORMATION

RENSEIGNEMENTS SUR LE REVENU

Obligation of
applicant

21. (1) A spouse who is applying for a child support order and whose income information is necessary to determine the amount of the order must include the following with the application:

21. (1) L'époux qui présente une demande d'ordonnance alimentaire et dont les renseignements sur le revenu sont nécessaires pour en déterminer le montant doit joindre à sa demande :

Obligation du
demandeur

(a) a copy of every personal income tax return filed by the spouse for each of the three most recent taxation years;

a) une copie de ses déclarations de revenus personnelles, pour les trois dernières années d'imposition;

(b) a copy of every notice of assessment and reassessment issued to the spouse for each of the three most recent taxation years;

b) une copie de ses avis de cotisation et de nouvelle cotisation, pour les trois dernières années d'imposition;

(c) where the spouse is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date, including overtime or, where such a statement is not provided by the employer, a letter from the spouse's employer setting out that information including the spouse's rate of annual salary or remuneration;

c) s'il est un employé, le relevé de paye le plus récent faisant état des gains cumulatifs pour l'année en cours, y compris les payes de surtemps ou, si un tel relevé n'est fourni par l'employeur, une lettre de celui-ci précisant ces renseignements et le salaire ou la rémunération annuels de l'employé;

(d) where the spouse is self-employed, for the three most recent taxation years

d) s'il est un travailleur indépendant, pour les trois dernières années d'imposition :

ble source during the current year, or if such a statement is not provided, a letter from the appropriate authority stating the required information.

cours à l'égard de la source applicable ou, si un tel relevé n'est pas fourni, une lettre de l'autorité en cause indiquant cette somme.

Obligation of respondent

(2) A spouse who is served with an application for a child support order and whose income information is necessary to determine the amount of the order, must, within 30 days after the application is served if the spouse resides in Canada or the United States or within 60 days if the spouse resides elsewhere, or such other time limit as the court specifies, provide the court, as well as the other spouse or the order assignee, as the case may be, with the documents referred to in subsection (1).

(2) L'époux qui se fait signifier une demande d'ordonnance alimentaire et dont les renseignements sur le revenu sont nécessaires pour en déterminer le montant doit fournir au tribunal ainsi qu'à l'autre époux ou au cessionnaire de la créance alimentaire, selon le cas, les documents visés au paragraphe (1) dans les 30 jours suivant la date de la signification, s'il réside au Canada ou aux États-Unis, ou dans les 60 jours suivant cette date, s'il réside ailleurs, ou encore dans tout autre délai fixé par le tribunal.

Obligation du défendeur

Special expenses or undue hardship

(3) Where, in the course of proceedings in respect of an application for a child support order, a spouse requests an amount to cover expenses referred to in subsection 7(1) or pleads undue hardship, the spouse who would be receiving the amount of child support must, within 30 days after the amount is sought or undue hardship is pleaded if the spouse resides in Canada or the United States or within 60 days if the spouse resides elsewhere, or such other time limit as the court specifies, provide the court and the other spouse with the documents referred to in subsection (1).

(3) Si, dans le cadre d'une procédure relative à une demande d'ordonnance alimentaire, un époux demande un montant pour des dépenses visées au paragraphe 7(1) ou invoque des difficultés excessives, l'époux qui aurait droit au montant de l'ordonnance alimentaire doit fournir au tribunal et à l'autre époux les documents visés au paragraphe (1) dans les 30 jours suivant la date de la demande du montant pour dépenses ou de l'allégation des difficultés excessives, s'il réside au Canada ou aux États-Unis, ou dans les 60 jours suivant cette date, s'il réside ailleurs, ou encore dans tout autre délai fixé par le tribunal.

Dépenses spéciales et difficultés excessives

Income over \$150,000

(4) Where, in the course of proceedings in respect of an application for a child support order, it is established that the income of the spouse who would be paying the amount of child support is greater than \$150,000, the other spouse must, within 30 days after the income is established to be greater than \$150,000 if the other spouse resides in Canada or the United States or

(4) Si, dans le cadre d'une procédure relative à une demande d'ordonnance alimentaire, il est établi que le revenu de l'époux faisant l'objet de la demande est supérieur à 150 000 \$, l'autre époux doit fournir à celui-ci et au tribunal les documents visés au paragraphe (1) dans les 30 jours suivant l'établissement du montant de ce revenu, s'il réside au Canada ou aux

Revenu supérieur à 150 000 \$

Failure to
comply with
court order

24. Where a spouse fails to comply with an order issued on the basis of an application under paragraph 22(1)(b), the court may

- (a) strike out any of the spouse's pleadings;
- (b) make a contempt order against the spouse;
- (c) proceed to a hearing, in the course of which it may draw an adverse inference against the spouse and impute income to that spouse in such amount as it considers appropriate; and
- (d) award costs in favour of the other spouse up to an amount that fully compensates the other spouse for all costs incurred in the proceedings.

Continuing
obligation to
provide income
information

25. (1) Every spouse against whom a child support order has been made must, on the written request of the other spouse or the order assignee, not more than once a year after the making of the order and as long as the child is a child within the meaning of these Guidelines, provide that other spouse or the order assignee with

- (a) the documents referred to in subsection 21(1) for any of the three most recent taxation years for which the spouse has not previously provided the documents;
- (b) as applicable, any current information, in writing, about the status of any expenses included in the order pursuant to subsection 7(1); and
- (c) as applicable, any current information, in writing, about the circumstances relied on by the court in a determination of undue hardship.

24. Si l'époux ne se conforme pas à l'ordonnance rendue par suite d'une demande faite en vertu de l'alinéa 22(1)b), le tribunal peut :

- a) rejeter tout acte de procédure de l'époux en défaut;
- b) rendre contre celui-ci une ordonnance d'outrage au tribunal;
- c) procéder à l'instruction, au cours de laquelle il peut tirer une conclusion défavorable à celui-ci et lui attribuer le montant de revenu qu'il juge indiqué;
- d) adjuger les dépens à l'autre époux, jusqu'à concurrence d'un montant couvrant tous les frais relatifs à la procédure.

Défaut de se
conformer à
l'ordonnance

25. (1) Le débiteur alimentaire doit, sur demande écrite de l'autre époux ou du cessionnaire de la créance alimentaire, au plus une fois par année après le prononcé de l'ordonnance et tant que l'enfant est un enfant au sens des présentes lignes directrices, lui fournir :

- a) les documents visés au paragraphe 21(1) pour les trois dernières années d'imposition, sauf celles pour lesquelles ils ont déjà été fournis;
- b) le cas échéant, par écrit, des renseignements à jour sur l'état des dépenses qui sont prévues dans l'ordonnance en vertu du paragraphe 7(1);
- c) le cas échéant, par écrit, des renseignements à jour sur les circonstances sur lesquelles s'est fondé le tribunal pour établir l'existence de difficultés excessives.

Obligation
continue de
fournir des
renseignements

	quest's receipt if the spouse resides elsewhere.	États-Unis, ou dans les 60 jours suivant cette date, s'il réside ailleurs.	
Deemed receipt	(6) A request made under any of subsections (1) to (3) is deemed to have been received 10 days after it is sent.	(6) L'époux est présumé avoir reçu la demande 10 jours après son envoi.	Présomption
Failure to comply	(7) A court may, on application by either spouse or an order assignee, where the other spouse has failed to comply with any of subsections (1) to (3) (a) consider the other spouse to be in contempt of court and award costs in favour of the applicant up to an amount that fully compensates the applicant for all costs incurred in the proceedings; or (b) make an order requiring the other spouse to provide the required documents to the court, as well as to the spouse or order assignee, as the case may be.	(7) Si l'époux ne se conforme pas à l'un des paragraphes (1) à (3), le tribunal peut, sur demande de l'autre époux ou du cessionnaire de la créance alimentaire: a) considérer le défaut comme un outrage au tribunal et adjuger les dépens au demandeur, jusqu'à concurrence d'un montant couvrant tous les frais relatifs à la procédure; b) rendre une ordonnance enjoignant à l'époux en défaut de fournir les documents requis au tribunal ainsi qu'à l'autre époux ou au cessionnaire de la créance alimentaire, selon le cas.	Défaut de se conformer
Unenforceable provision	(8) A provision in a judgment, order or agreement purporting to limit a spouse's obligation to provide documents under this section is unenforceable. SOR/97-563, s. 3(E).	(8) Toute disposition dans un jugement, ordonnance ou entente visant à restreindre l'obligation d'un époux de fournir des documents conformément au présent article est inexécutoire. DORS/97-563, art. 3(A).	Ordre public
Provincial child support services	26. A spouse or an order assignee may appoint a provincial child support service to act on their behalf for the purposes of requesting and receiving income information under any of subsections 25(1) to (3), as well as for the purposes of an application under subsection 25(7).	26. Tout époux ou le cessionnaire de la créance alimentaire peut mandater le service provincial des aliments pour enfants aux fins de l'obtention des renseignements visés aux paragraphes 25(1) à (3) et de la demande prévue au paragraphe 25(7).	Mandat
	COMING INTO FORCE	ENTRÉE EN VIGUEUR	
Coming into force	27. These Guidelines come into force on May 1, 1997.	27. Les présentes lignes directrices entrent en vigueur le 1 ^{er} mai 1997.	Entrée en vigueur

- (j) Newfoundland and Labrador;
- (k) Yukon;
- (l) Northwest Territories; and
- (m) Nunavut.

5. *The amounts in the tables are based on economic studies of average spending on children in families at different income levels in Canada. They are calculated on the basis that child support payments are no longer taxable in the hands of the receiving parent and no longer deductible by the paying parent. They are calculated using a mathematical formula and generated by a computer program.*
6. *The formula referred to in note 5 sets support amounts to reflect average expenditures on children by a spouse with a particular number of children and level of income. The calculation is based on the support payer's income. The formula uses the basic personal amount for non-refundable tax credits to recognize personal expenses, and takes other federal and provincial income taxes and credits into account. Federal Child Tax benefits and Goods and Services Tax credits for children are excluded from the calculation. At lower income levels, the formula sets the amounts to take into account the combined impact of taxes and child support payments on the support payer's limited disposable income.*

SOR/97-563, ss. 4 to 9; SOR/99-136, ss. 1, 2; SOR/2005-400, ss. 3 to 5; SOR/2011-267, s. 1.

- j) Terre-Neuve-et-Labrador
- k) Yukon
- l) Territoires du Nord-Ouest
- m) Nunavut

5. *Les montants figurant dans les tables reposent sur des études économiques sur ce qu'il en coûte pour élever des enfants dans des familles à divers niveaux de revenu au Canada. Ils ont été calculés compte tenu du fait que les pensions alimentaires reçues ne sont plus imposables et que celles payées ne sont plus déductibles. Ils ont été calculés selon une formule mathématique et produits au moyen d'un programme informatique.*
6. *La formule permet d'établir des montants de pensions alimentaires qui tiennent compte de la dépense moyenne que représente un enfant pour un époux avec un nombre d'enfants et un revenu donnés. Le calcul se fonde sur le revenu du débiteur alimentaire. Elle tient compte du crédit d'impôt non remboursable au titre du montant personnel de base pour reconnaître les dépenses personnelles. Elle tient également compte d'autres taxes et crédits fédéraux et provinciaux sur le revenu. Les prestations fiscales fédérales pour enfants et le crédit pour la taxe sur les produits et services sont exclus du calcul. Pour les revenus annuels moins élevés, la formule permet d'établir le montant sans perdre de vue l'incidence combinée des impôts et des paiements de la pension alimentaire pour enfants sur le revenu disponible limité dont dispose le débiteur alimentaire.*

DORS/97-563, art. 4 à 9; DORS/99-136, art. 1 et 2; DORS/2005-400, art. 3 à 5; DORS/2011-267, art. 1.