

FAMILY LAW REFORM
ALRI and Alberta Justice Positions Compared
[April 9, 2002]

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FAMILY LAW REFORM

ALRI and Alberta Justice Positions Compared

[April 9, 2002]

2. CHILD SUPPORT

Overview

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
1	The federal government has responsibility for child support matters at the time of divorce. Provincial legislation deals with the support of children in all other cases, including after a divorce if no federal order for support has been made.		
2	In Alberta, several pieces of legislation deal with child support. These include the <i>Maintenance Order Act</i> , <i>Domestic Relations Act</i> , <i>Parentage and Maintenance Act</i> , and <i>Maintenance Enforcement Act</i> . Currently, there are a number of inconsistencies between these Acts or between these Acts and the federal <i>Divorce Act</i> . Family Law Reform is attempting to eliminate these inconsistencies.		

2.1 Child Support

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
3	Use of federal child support guidelines is mandatory when the courts determine child support under the <i>Divorce Act</i> . And while this is not the case under current Alberta law, courts considering child support matters under provincial legislation also use the federal guidelines. To formalize this practice, it is proposed that Alberta adopt legislation that makes the use of the federal child support guidelines mandatory. It is further proposed the law recognize the following principles:	Rfd18.3, Rec. 14.3: Rather than create its own child support guidelines, Alberta should apply the Federal Child Support Guidelines, including the Schedules, to cases decided under Alberta law.	AGREE. AJ proposal follows ALRI Rec. 14.3.
4	<ul style="list-style-type: none"> • That a parent has a basic obligation to support a child. 	Rfd18.3, Rec. 4.3: Alberta legislation should set out the basic obligation of a parent to support their child.	AGREE. AJ position is consistent with ALRI Rfd18.3, Rec. 4.3.
5		Rfd18.3, Rec. 5.3: The legislated obligation to the child should: (1) be based on the parent-child relationship; (2) be owed by each of the mother and father; (3) commence on the child's birth [see below]; (4) continue until the child reaches maturity (as defined in Rec. No. 4) [SEE BELOW]; and (5) exist independently of parental custody, access or other living arrangements. [SEE BELOW]	
6		Rfd18.3, Rec. 13.3: The court should have power to make an order of child support against each parent of a child.	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
7	<ul style="list-style-type: none"> • That children should be treated equally. This includes children of marriages and other relationships; children of first and subsequent relationships. 	Rfd18.3, Rec. 3.3: Under Alberta legislation, children’s support rights should be the same no matter what the relationship between the child’s parents, be it marital or non-marital, cohabitational or non-cohabitational.	AGREE. AJ wording modifies the wording of Rfd18.3, Rec. 3.3 but the meaning is the same.
8	<ul style="list-style-type: none"> • That the obligation to support a child rests only with a child's parents (or a child's guardians if they are not the same as the parents). 	Rfd18.4, Rec. 9.4: A non-parent guardian should have the same powers, responsibilities, rights and duties as a parent guardian, except the duties to give the child love and affection and to support the child from the guardian’s personal resources.	<p>AGREE with respect to parents.</p> <p>DISAGREE with respect to non-parent guardians. Historically, unlike a parent, a guardian who is not a parent does not have a duty to support the child from personal resources or a duty to give the child love and affection. ALRI takes the common position that these duties should not be imposed on non-parent guardians.</p>
9			In ALRI’s view, in the case of non-parents, guardianship and support should be separate considerations. It would be contrary to a child’s best interests to deny the appointment of the person best suited for guardianship by reason of their relationship with the child because that person is not in a position, in addition, to take on the financial burden associated with raising a child.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
10			In many instances, non-parent guardianship will be granted to a member of the child's extended family (either by appointment by an existing guardian in deed or will, or by court order). In this situation, imposing a support obligation on an extended family member who is willing to assume the responsibilities of guardianship is inconsistent with the AJ proposals that the extended family support obligation within the <i>Maintenance Order Act</i> be discontinued and that the new legislation will limit the legal support obligation to parents supporting children, and to spouses. [See 1.1 under Spousal Support.]
11	<ul style="list-style-type: none"> • That the support obligation of a child's parents begins at the child's birth. 	Rfd18.3, Rec. 5.3: The legislated obligation to the child should: (3) commence on the child's birth;	AGREE. Adopts Rfd18.3, Rec. 5.3.
12	<ul style="list-style-type: none"> • That child support is given priority over spousal support. 	Rfd18.3, Rec. 1.3: Child support should be determined separately from spousal support.	AGREE. Adopts Rfd18.2, Rec. 9.2 and Rfd18.3, Recs. 1.3 and 2.3.
13		Rfd18.2, Rec. 9.2: Child support should take priority over spousal support.	
14		Rfd18.3, Rec. 2.3: Alberta legislation should expressly require the court, where it is considering applications for child support and spousal support, to give priority to child support in determining the applications.	

2.2 Age of Maturity

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
15	<i>Issue for discussion:</i> The age at which child support should end.		
16	<i>Background:</i> Under the federal <i>Divorce Act</i> , there is an obligation to support a child of the marriage. A child of the marriage is defined as someone under the age of majority. In Alberta, that is 18 years of age. Current Alberta legislation concerning child support varies between 16 and 18, depending on the Act. It is proposed that provincial legislation be changed to make a child's 18th birthday the consistent cut-off point for support.		
17	It is recognized in federal law and in society that some children may be independent before age 18 or require parental support after they turn 18. Two exemptions to Alberta's new age of maturity legislation are being contemplated:	Rfd18.3, Rec. 5.3: The legislated obligation to the child should: (4) continue until the child reaches maturity.	
18		Rfd18.3, Rec. 11.3: Alberta law should, in so far as practicable, promote the economic self-sufficiency of a child upon attaining, or within a reasonable period of time after the child has attained, the age of majority.	AJ Workbooks contain no statement equivalent to the principle set out in ALRI Rfd18.3, Rec. 11.3.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
19		Rfd18.3, Rec. 12.3: Alberta child support law should foster the equitable sharing by both parents of the provision of a reasonable standard of living to their child who is under the age of majority and assistance to their child who is over the age of majority but unable, by reason of illness, disability or other cause, to provide the necessities of life for themselves.	AJ does not carry forward ALRI's distinction between the basis for the assessment of support owed by a parent to a child until, compared with after the child reaches the age of majority.
20	<ul style="list-style-type: none"> The child support obligation would end if a child has voluntarily left home before age 18 to pursue an independent lifestyle. Parents would be required to provide child support again if the child returned to his or her parents' care before the age of 18. 	Rfd18.3, Rec. 6.3: Alberta legislation should confer power on the court to order a parent to pay support for a child who (a) is under the age of majority and who has not withdrawn from their charge, or	AGREE, providing that the child's withdrawal was not caused by the parent's wrongful conduct.
21	<ul style="list-style-type: none"> The child support obligation could continue if a child 18 years of age or older cannot become independent because of illness, disability or some other cause. 	(b) is the age of majority or over and under their charge but unable, by reason of illness, disability, or other cause, to withdraw from their charge or to obtain the necessities of life.	AGREE. This position promotes harmony with the <i>Divorce Act</i> .
22	There is also some debate about who should be legally liable under Alberta law to support a dependent child over the age of majority. Under the federal <i>Divorce Act</i> , separated or divorced parents have a legal obligation to support dependent children over the age of 18 if they cannot become independent because of illness, disability or some other cause. The provincial <i>Domestic Relations Act</i> uses a similar test for children over the age of 16 where the parents are separated. The <i>Alberta Maintenance Order Act</i> requires parents to support children over 16 who are handicapped or unable to work.		The Alberta provision requiring parents to support children over 16 who are handicapped or unable to work is located in Part 4 of the <i>Domestic Relations Act</i> – the Part that confers jurisdiction on the Provincial Court. Part 7 of the Act – the Part that applies to cases brought in the Court of Queen's Bench – does not contain this provision.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
23	Under the Divorce Act, courts have interpreted “other cause” to include a child who is a student pursuing further education. Some people have suggested a legal obligation to support a child 18 years of age or older attending school should be restricted to the completion of high school.		

AJ Questions:

2.2.a. Should child support by a parent continue once a child turns 18?

ALRI Responses:

Yes, in limited circumstances.

ALRI previously recommended that a distinction be drawn between the support obligation owed by parents to a child under age 18, and a child 18 years of age or more. For a child under age 18, the parental obligation would foster the equitable sharing by both parents of the provision of a reasonable standard of living to their child, as reflected in the federal Child Support Guidelines. For a child 18 years of age or over, the parental obligation would be to assist the child in limited circumstances.

AJ Questions:

ALRI Responses:

With certain exceptions, children 18 years of age or more would be required to take appropriate steps leading to their financial self-sufficiency upon attaining, or within a reasonable period of time after having attained, the age of majority: RD18.3, Rec. 11.3. Undertaking further education is one example of a step an adult child would be assisted to take in order to attain financial self-sufficiency within a reasonable period of time after turning 18. The policy of promoting the concept of financial self-sufficiency would guide developments in the law for children who have reached adult age.

The AJ Workbooks do not articulate an equivalent policy of assistance (rather than full responsibility to provide the child with a reasonable standard of living) with respect to the support obligation owed to adult children. It is silent about the adult child's responsibility to become financially self-sufficient – an expectation which society ordinarily places on adult children. It is our opinion that the law should articulate these policies.

AJ Questions:

ALRI Responses:

Since issuing our RFDs, we have rethought the implications of allowing the exceptions we recommended previously. Those exceptions were the ones identified in the *Divorce Act*, that is, in non-intact families the parents of children who are over the age of majority but unable, by reason of illness, disability or other cause, to provide the necessities of life for themselves would continue to owe a support obligation: RD18.3, Rec. 12.3. As a general matter, we hesitate to impose a greater legal burden on the parents of children in non-intact families than the law now imposes on the parents of children in intact families. *See our response to questions 2.2.b and 2.2.c.*

AJ Questions:

ALRI Responses:

We do not think that the provisions of the *Divorce Act* should govern the direction of reform on these issues. Constitutionally, outside of “marriage and divorce” which is a matter for federal jurisdiction, it seems to us that the support obligations of family members is a matter for determination by the provinces under the head of “property and civil rights.” We think it questionable whether the imposition of support obligations with respect to adult children is a necessary corollary of the federal jurisdiction over “marriage and divorce.” We have not researched the matter in depth, but it does appear that these provisions may be open to constitutional challenge. In our view, the support obligations owed by parents to their adult children is an area in which the province should be setting the standard.

AJ Questions:

2.2.b. If support should continue, should there be a distinction made between intact families and families that have separated?

ALRI Responses:

Yes, but only in carefully circumscribed situations. Under ALRI's recommendations, the parental obligation to support a child exists independently of the relationship between the child's parents (married, cohabiting, living separate and apart). We have taken the position that private family law should not interfere with decision-making in intact families. We think it reasonable to assume that parents in an intact family will be able to agree on the issue of child support beyond age 18, and that their decision will reflect their shared family values. The state should not be telling parents in intact families how to bring up their children.

AJ Questions:

ALRI Responses:

In contrast, parents in a non-intact family are apt to disagree on the issue of child support both under and beyond age 18. It is therefore appropriate for the law to set the standard for child support in non-intact families in order to reduce the potential for conflict between the separated parents. At the same time, as stated in answer to question 2.2.a, in general we are hesitant to impose a greater legal burden on the parents of children in non-intact families than the law now imposes on the parents of children in intact families. A strong reason to add to the support obligation owed by parents in non-intact families should be shown.

We note, as an aside, that in situations where the law gives a right to support over age 18, the ALRI recommendations would allow the child to bring an application against the parents: RFD18.3 (Child Support), Recs. 19.3 and 22.3.

AJ Questions:

2.2.c. If support should continue, should support be limited to:

- **Children 18 years and over who have an illness or disability?**

ALRI Responses:

Agree, to the extent that the law imposes a support obligation on the parents of children in intact families. We cannot see justification for increasing the obligations of parents in non-intact families (but not intact families) in situations where the state has an obligation to undertake an active role in caring for its most vulnerable citizens, as in the case of ill or disabled adults. In our view, the question of the respective responsibilities of parents and the state toward adult children needs further attention: see, e.g. *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9, File No.: 27891. Questions of the following kind need to be addressed: What is the appropriate relationship between private and public law when it comes to caring for persons who are unable to care for themselves? In what circumstances and how should the burden be shared? In what circumstances should the burden shift to become society's responsibility?

AJ Questions:

ALRI Responses:

The province should ensure that principled policies govern the financial responsibilities of private citizens and the state, respectively, for ill, disabled or otherwise destitute adults.

As an aside, we note that the *Maintenance Order Act*, ss. 2 and 3, places a duty on parents (first the father and secondarily the mother) to maintain their adult children who are “old, lame, mentally deficient or impotent” or otherwise destitute and unable to work. (The ordinary obligation of a parent under this Act ceases when the child turns 16.) However, this Act is antiquated and it is our understanding that the duties it imposes are rarely enforced. This being so, it would be inequitable to apply it to non-intact families only.

AJ Questions:

ALRI Responses:

The *Child Welfare Act* is an example of legislation that provides for the apportionment of financial responsibility between private citizens and the state. It empowers the court to order a person who is legally responsible for the support of a child to contribute financially to the child's maintenance while in the care of child welfare authorities: see e.g. s. 31(4)(c) (temporary guardianship order) and s. 34(6)(a) (permanent guardianship order). Section 41 lists "relevant circumstances" for the court to consider in requiring a person to pay maintenance for a child under the Act. Section 128 establishes the liability of the Minister to pay costs incurred for the care and maintenance of a child in public care.

AJ Questions:

- **Children 18 years and over who are engaged in further education (i.e., attending high school, college or university)?**

- **Children 18 years and over who are otherwise unable to become independent?**

ALRI Responses:

Agree, subject to the reasonable limits that follow from imposing an obligation on the child to become financially self-sufficient within a reasonable time after turning 18. In most situations assistance to obtain a first degree (or equivalent credential) would be reasonable. The rule of thumb would be assistance for 4 years of further education. This answer promotes harmonization of the federal and provincial law because, in general, further education has been understood to fall within the definition of “other cause” under the provisions in the *Divorce Act*.

Agree, to the extent that the law imposes a support obligation on the parents of children in intact families. *See our response, p. ?, to question 2.2.c: children 18 years and over who have an illness or disability?*

2.3 Definition of Parents

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
24	Alberta Justice proposes that parents be defined as biological parents, adoptive parents or persons found by the courts to be parents.	Rfd18.3, Rec. 7.3: For purposes of child support law, Alberta should adopt the following definitions: (1) “parent” means the mother or father of a child; (2) “mother” means (a) the biological mother of the child, (b) in the case of adoption, the adoptive mother of the child, or (c) a woman who has been found by a court to be the mother of the child;	AGREE. Adopts Rfd18.3, Rec. 7.3(1), (2) and (3).
25		(3) “father” means (a) the biological father of the child, (b) in the case of adoption, the adoptive father of the child, or (c) a man who has been found by a court to be the father of the child.	
26		Rfd18.3, Rec. 8.3: For the purposes of Recommendation 7.3, (a) a woman is presumed to be the biological mother of the child where she gave birth to the child,	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
27	It is further proposed that the current presumption of parentage in the <i>Domestic Relations Act</i> be expanded to include a situation where the person cohabited with the mother of the child for at least 12 consecutive months immediately before, during or after the birth of the child and where that person has acknowledged that he is the father of the child. An acknowledgement of paternity alone would be sufficient to establish parental obligations, but not to establish parental rights.	(b) a man is presumed to be the biological father of the child where (i) he satisfies one of the criteria set out in section 63(1) of the <i>DRA</i> , but repealing section 63(1)(d) and substituting “the person cohabited with the mother of the child for at least 12 consecutive months immediately before, during or after the time of birth of the child and has acknowledged that he is the father of the child”, or (ii) he has otherwise acknowledged that he is the father of the child.	AGREE. Adopts ALRI Rfd1 8.3, Rec. 8.3(b).
28		Rfd18.3, Rec. 9.3: Where circumstances exist that give rise to a presumption under Recommendation 8.3(b) that more than one person might be the father of a child, no presumption as to paternity should be made.	
29		Rfd1 8.3, Rec. 10.3: For the purposes of child support, (a) where the court is satisfied that any one of two or more persons may be the father of a child and is unable to determine which one of them is the father, the court should be able to make an order declaring each person who, in the opinion of the court, might be a father to be a father, and	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
30		(b) where the court is satisfied that any one of two or more persons may be the mother of a child and is unable to determine which one of them is the mother, the court should be able to make an order declaring each person who, in the opinion of the court, might be a mother to be a mother.	
31	Sperm donors would have no parental obligations or rights under the proposed new legislation unless there was an agreement to the contrary. This is consistent with 1991 Uniform Law Conference of Canada legislative provisions that have been adopted by Newfoundland and the Yukon. These provisions include:		AGREE. ALRI identified the question of the parentage of children conceived with the assistance of new reproductive technologies as a “future law reform topic” in Rfd18.1 at 7.
32	• A man whose own genetic material was used to artificially inseminate the woman with whom he is married or cohabiting is deemed to be the biological father of a child, even if his genetic material was mixed with other genetic material.		
33	• Where his own semen was not used to artificially inseminate the woman with whom he is married or cohabiting, a man is deemed to be the biological father if he consented in advance to the insemination, or if he did not consent in advance, subsequently agreed to assume the responsibilities of fatherhood, or treated the child as his own, with the full knowledge of the circumstances of conception.		

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
34	<ul style="list-style-type: none"> Unless there is a written agreement to the contrary, a man who donates semen but who is neither married to or cohabiting with the woman who receives it, is not the biological father of the child for any purpose, including any obligation to pay child support, or any entitlement to custody, access, or any other incident of guardianship. 		

2.4 Persons Standing in the Place of a Parent

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
35	<p>Issue for discussion: Child support obligations of persons standing in the place of parents.</p>		
36	<p>Background: The break-up of a marriage or other interdependent relationship is often followed by the formation of new family groups. Another adult partner often takes on the role of mother or father to children of the previous relationship. The legal obligation of such a person is not clear in provincial legislation. The federal <i>Divorce Act</i> and legislation in many other provinces dictates that a person acting in the place of a parent is legally responsible to provide child support.</p>		

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
37	Alberta Justice proposes that the court have the discretion to order a person who stands in the place of a parent to pay child support. It is further proposed that a person may not unilaterally withdraw from a legal, parent-like relationship. This is consistent with Supreme Court of Canada decisions involving <i>Divorce Act</i> cases.	Rfd18.3, Rec. 18.3: Alberta legislation should give the court discretion to order that child support be paid by a person who stands or has stood in the place of a parent, even where that person has withdrawn from the relationship.	AGREE. Adopts Rfd18.3, Rec. 18.3.
38	Although persons standing in the place of parents may have a legal obligation to support a child, it has been suggested that they should not fall under the same child support guidelines as a child's natural parents. Instead, the court should have discretion to make a child support order that is appropriate for the circumstances.		

AJ Question [Public Workbook]:

2.4.a. Should standard child support guidelines apply to persons acting in the place of a parent?

ALRI Response:

No. The court should have discretion to determine whether support should be paid and in what amount: see ALRI Rfd18.3, Rec. 18.3.

	[Technical Workbook]		
39	Issue for discussion: Child support obligations of persons standing in the place of parents.		
40	Background: [CONTINUATION OF BACKGROUND IN PUBLIC WORKBOOK] Determining what constitutes a parent-like relationship is not defined in Alberta law. Alberta is considering three definitions:		
41	<ul style="list-style-type: none"> A person who has lived in an interdependent relationship with the parent of a child for at least two years and has contributed to the child's maintenance for at least one year. British Columbia currently uses this standard. 		
42	<ul style="list-style-type: none"> The courts be given the discretion to decide based on the nature of the relationship. This is consistent with a Supreme Court of Canada decision regarding a recent case. 	Rfd18.3, Rec. 7.3: For purposes of child support law, Alberta should adopt the following definitions: (4) "person standing in the place of a parent" means a person who has demonstrated a settled intention to treat a child as a child of their family.	This is ALRI's position: Rfd 18.3, Rec. 7.3.
43	<ul style="list-style-type: none"> Allow the courts to use its discretion but provide some guidance by giving the court a non-exhaustive list of factors to consider. 		This could be helpful.

44	Federal child support guidelines imply that the child support obligation of the parent is greater than that of someone standing in the place of the parent. Legislation in some provinces agreed with this approach. Manitoba's legislation lists the order of priority, beginning with the natural or adoptive parents and ending with a person standing in the place of a parent who is not married or cohabitating with the child's natural or adoptive parent.		Manitoba and other examples are set out in Rfd18.3 at 109-110.
45	If more than one adult is obligated to pay child support, legislation needs to provide a method of apportioning such obligations between individuals. The following options have been suggested:		
46	<ul style="list-style-type: none"> • Allow complete judicial discretion as is found in existing federal child support guidelines. 	Rfd18.3, Rec. 18.3: Alberta legislation should give the court discretion to order that child support be paid by a person who stands or has stood in the place of a parent, even where that person has withdrawn from the relationship. [REPEATED FROM ABOVE.]	AGREE. This is ALRI's recommendation: Rfd18.3, Rec. 18.3.
47	<ul style="list-style-type: none"> • Begin with the amounts owed by each payer as outlined in the federal guidelines but allow judicial discretion to change amounts based on the means, needs and circumstances of the parties involved, the nature and length of the relationship each payer has had with the child and whether such a relationship continues to exist. 		DISAGREE.
48	<ul style="list-style-type: none"> • Add the incomes of all the payers, determine the federal guideline amounts based on the total and apportion the amount pro rata based on the payers' income. 		DISAGREE.

49	<ul style="list-style-type: none"> • Apply the federal guidelines to each payer individually. 		DISAGREE.
50	<ul style="list-style-type: none"> • Reduce the previous payer's child support by the amount to be paid by the current payer. 		DISAGREE.
51	<ul style="list-style-type: none"> • Apportion child support based on each payer's ability to pay. This imposes a budget-based formula on top of federal guidelines. 		DISAGREE.
52	In a recent court decision, the Supreme Court of Canada suggested that a parent who has paid the entire amount of a child support order might be entitled to seek contributions from a parent who has failed to pay his or her share.	Rfd18.3, Rec. 36.3: Alberta legislation should give the court discretion to order that support be paid in respect of any period before the date of the order, including the period of entitlement occurring before the commencement of proceedings.	AGREE. Reflects ALRI Rfd18.3, Rec. 26.3. In this case, the words "a parent who has paid ..." should include "a person standing in the place of a parent who has paid ..." The reference to "entire amount" should be altered to refer to a "disproportionate amount."
53	To enable this to occur, the Alberta Law Reform Institute has suggested the court be given the power to add another person to a support order application that may have a support obligation to the same dependent child.	Rfd18.3, Rec. 46.3: Alberta legislation should expressly empower the court to add as a party another person who may have an obligation to provide support to the same dependent child.	AGREE. ALRI Rfd18.3, Rec. 46.3 operates prospectively as well as (potentially) retrospectively.

AJ Questions [Technical Workbook]:

2.4.a. Which definition do you think best describes a parent-like relationship? Are there changes that could be made to make one of the definitions more appropriate?

2.4.b. Should normal child support laws apply to persons acting in the place of a parent or should the court be allowed to use judicial discretion?

ALRI Responses:

ALRI recommends defining “person standing in the place of a parent” to mean “a person who has demonstrated a settled intention to treat a child as a child of their family”: RFD18.3 (Child Support), Rec. 7.3(4); it may apply even where the person has withdrawn from the relationship: RFD18.3 (Child Support), Rec. 18.3.

Judicial discretion. In cases where a person standing in the place of a parent has a duty to support a child, ALRI prefers leaving apportionment to the discretion of the court: RFD18.3 (Child Support), Rec. 18.3. As AJ observes in the Technical Workbook, allowing complete judicial discretion is the approach taken in the federal Child Support Guidelines. Under our recommendation, the court would have discretion to order that child support be paid by a person who stands or has stood in the place of a parent, even where that person has withdrawn from the relationship.

AJ Questions [Technical Workbook]:

2.4.c. Should the law recognize there are priorities among adults who are obligated to provide child support? If so, what should those priorities be?

2.4.d. Among the options presented for apportioning child support obligations between individuals, is there one that you prefer? Are there changes that could be made to one of the options that would make it more suitable?

ALRI Responses:

Yes, the law should recognize priorities among adults who are obligated to provide child support. The basic obligation should be imposed on parents: ALRI RFD18.3 (Child Support), Rec. 4.3. Parents should be as defined in RFD18.3 (Child Support), Recs. 7.3 and 8.3 with the addition of sperm donors as proposed by AJ in accordance with the 1991 Uniform Law Conference of Canada legislative provisions (see heading E.2.a below). As a general matter, the obligation of a parent, so defined, should prevail over the obligation of a person standing in the place of a parent.

We prefer judicial discretion. We have considered the AJ alternatives, some of which are discussed in the ALRI report and some of which are not, but we continue to support our original recommendation for court discretion. Choosing the alternative of discretion is consistent with the federal Child Support Guidelines and thus fosters the principle of harmonization of federal and provincial child support law.

AJ Questions [Technical Workbook]:

2.4.e Should legislation include a mechanism that allows one person to secure child support contributions from another obligated person? Should that mechanism be the one recommended by the Alberta Law Reform Institute?

ALRI Responses:

Yes, in accordance with ALRI Rfd18.3, Recs. 6.3 and 46.3.

2.5 Child Support Applications

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
54	The government will continue to be able to apply for support on behalf of a person and assume the role of creditor, as well as continuing to have the ability to assist a person to apply for support on his or her own behalf. In addition, it is proposed the following be set into law:		
55	• That a child, a parent, a person who has care and control of a child, or the government (where it is entitled) may make a child support application.	Rfd18.3, Rec. 19.3: The following persons should be eligible to apply for child support: (a) the child, or (b) any person acting on behalf, or in the place, of the child.	AGREE. Consistent with Rfd18.3, Recs. 19.3 and 26.3. Rec. 19.3(b) would come into play where the child is under age 18 and does not have capacity to bring an application on his or her own behalf.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
56		Rfd18.3, Rec. 26.3: The Alberta government should continue to assist (a) a parent or other person having the care and control of a child, ...	Where parents do not provide adequate support to a child under the age of 18 years, child welfare may become involved. That is to say, an application by government in its subrogated capacity may be more appropriate than private application on behalf of the child.
57	• That the court can, if necessary, make a child support order part of making a spousal support order.	Rfd18.3, Rec. 20.3: Where a court is satisfied that, in an application for relief made to it by or on behalf of a parent, application for support should also have been made on behalf of a child, the court may make an order for child support.	AGREE. Reflects Rfd18.3, Rec. 20.3, implying that the court may act on its own motion.
58	• That a support application can be made before a child is born but can't be heard or disposed of until after the child's birth.	Rfd18.3, Rec. 21.3: Alberta legislation should allow an application for child support to be made prior to the child's birth, but no such action should be heard or disposed of prior to the birth of the child.	AGREE. Adopts Rfd18.3, Rec. 21.3.
59	• That the same persons who can apply for child support may apply for interim support or to vary a support order.	Rfd18.3, Rec. 23.3: The same persons who are eligible to apply for a child support order should be eligible to apply for an interim support order.	AGREE. Adopts Rfd 18.3, Recs. 23.3 and 22.3(a) and (b).
60		Rfd18.3, Rec. 22.3: The following persons should be eligible to apply for a child support variation order: (a) the child, (b) any person acting on behalf, or in the place, of the child; or (c) where the person against whom the child support order was made is deceased, that person's personal representative.	In addition, ALRI would allow application for variation by the personal representative of a deceased payor parent: Rec. 22.3(c).

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
61	<ul style="list-style-type: none"> • That the mother or any person acting on behalf of or in place of the mother may make a child support application to cover expenses related to pregnancy. 	<p>Rfd18.3, Rec. 24.3: Where no spousal support order has been made in connection with such expenses, the following persons should be able to apply for the reasonable expenses described in Recommendation 15.3 related to the pregnancy for the support of the mother before, at and after the child's birth:</p> <ul style="list-style-type: none"> (a) the mother, or (b) any person acting on behalf, or in the place, of the mother. 	AGREE. Adopts Rfd18.3, Rec. 24.3. Also see Rfd18.2, Rec. 10.2.
62		<p>Rfd18.3, Rec. 26.3: The Alberta government should continue to assist</p> <ul style="list-style-type: none"> (b) a person who is supporting a mother or child to apply for child support or the recovery of the mother's expenses where that parent or other person is receiving, or has received, public financial assistance in order to support the child or mother, whether or not that assistance was provided directly (as in the case of social assistance) or indirectly (as in the case of a day care subsidy). 	
63	<ul style="list-style-type: none"> • That any person who incurred burial expenses for a child may make a child support application to offset burial costs. 	<p>Rfd18.3, Rec. 16.3: Alberta legislation should empower the court to order a parent to pay</p> <ul style="list-style-type: none"> (a) burial expenses for the child; (b) burial expenses for the mother if she should die as a consequence of the pregnancy or birth. 	AGREE. Adopts Rfd18.3, Rec. 25.3. Also see Rfd18.3, Rec. 16.3.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
64		Rfd18.3, Rec. 25.3: Any person who has incurred burial expenses for (a) the child, or (b) the mother if her death is a consequence of the pregnancy or birth should be eligible to apply to court for reimbursement of those expenses by a parent or parents.	
65	• That a child support order be terminated upon the adoption of the child.	Rfd18.3, Rec. 40.3: Alberta legislation should provide that a child support order terminates on the adoption of the child receiving support.	AGREE. Adopts Rfd18.3, Rec. 40.3.

2.6 Child Support Agreements

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
66	Issue for discussion: Impact of child support agreements on the court.		
67	Background: Courts have never been bound by agreements between parents governing support because children are not parties to those agreements and the courts have an obligation to protect children's rights. It is suggested, however, that new legislation provide for the following:		

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
68	<ul style="list-style-type: none"> The court may use its discretion regarding acceptance of a child support agreement. 	Rep53, Part IV–Draft Legislation, s. 27(1): In the determination of any matter respecting the support, education, moral training or custody of or access to a child, the court may disregard any provision of a domestic contract pertaining thereto where, in the opinion of the court, to do so is in the best interests of the child.	AGREE that court should have discretion to override the provisions of a child support agreement. AJ position is consistent with ALRI Rep53, Rep53, Part IV–Draft Legislation, s. 27(1). and Rfd18.3, Rec. 17.3(a), (b) and (c).
69		Rfd18.3, Rec. 17.3: Alberta should enact those provisions set out in Part II of the draft legislation proposed in Part IV of ALRI Report No. 53 that relate to domestic contracts providing for child support, but modified (a) to extend to any child support agreement,	
70		(b) to specify that either parent or the child may apply for relief from the provisions in a child support agreement,	Rfd18.3, Rec. 17.3(b) is consistent with the ALRI recommendations on who may apply for a child support order.
71		(c) to empower the court to vary, discharge or temporarily suspend and again revive the provisions in a child support agreement,	Rfd18.3, Rec. 17.3(c) is consistent with the ALRI recommendations on the power of the court to vary a child support order.
72	<ul style="list-style-type: none"> The court may depart from child support guidelines where adequate provision has been made for a child. 		This AJ statement is consistent with the view that the court should have discretion to depart from the child support guidelines in extraordinary circumstances.
73	<ul style="list-style-type: none"> The court may order that a child support agreement constitutes a final settlement of the child support obligation and that compliance discharges all future child support claims. 	(e) to empower the court to make an order confirming whether or not the child support agreement constitutes a final settlement of the child support obligation and that compliance discharges all future child support claims.	REVISITED. [SEE ANSWER TO AJ QUESTION 2.6.A SET OUT BELOW.]

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
74	<ul style="list-style-type: none"> Provisions establishing that a contract is enforceable if made in compliance with the law where the agreement was formed or with Alberta law. 	<p>ALRI Rep53, Part IV–Draft Legislation, s. 19: The manner and formalities of making a domestic contract and its essential validity and effect are governed by the proper law of the contract, except that,</p> <p>(a) a contract for which the proper law is that of a jurisdiction other than Alberta is also valid and enforceable in Alberta if entered into in accordance with the internal law of Alberta;</p> <p>(b) section 17 [contracts subject to best interests of child] and section 22 [discretionary powers of court] apply in Alberta to contracts for which the proper law is that of a jurisdiction other than Alberta; and</p> <p>(c) a provision in a marriage contract or cohabitation agreement respecting the right to custody of or access to children is not valid or enforceable in Alberta.</p>	REVISITED. Varies ALRI Rep53, Part IV–Draft Legislation, s. 19.
75		<p>RFD18.3, Rec. 17.3: Alberta should enact those provisions set out in Part II of the draft legislation proposed in Part IV of ALRI Report No. 53 that relate to domestic contracts providing for child support but modified</p> <p>(d) to require the court to record its reasons where it upholds an agreement that provides for child support in an amount that is different from the amount that would be determined in accordance with the applicable child support guidelines,</p>	AJ has no equivalent provision.

AJ Question:

2.6.a Should the court be able to order that a child support agreement constitutes a final settlement of a child support obligation? Should compliance with such an order discharge all future child support claims?

ALRI Response:

No. As it did for spousal support, ALRI has revisited its recommendation that the court should be able to order the final settlement of child support: RFD18.3, Rec. 17.3(e). We are now of the view that the court should be able to exercise its discretion with respect to child support at any time an issue is raised. This position fosters harmonization with the *Divorce Act* and the common law under which, as AJ points out, the courts have never been bound by agreements between parents governing support because children are not parties to those agreements and the courts have an obligation to protect children's rights.