

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

[Topic headings follow Alberta Justice Technical Workbook]

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**4. COURT JURISDICTION AND POWERS**

NOTE: ALRI's made recommendations for a uniform substantive law that would apply to the resolution of all family law matters, regardless of the court in which the matter is raised. A corollary of this position is that, in the interests of facilitating the fullest possible access to justice in family matters, the Provincial Court should have the fullest jurisdiction that is constitutionally available to it.

**Overview**

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
1	Over time, some aspects of provincial legislation involving family law have become out-dated, particularly given the way in which Albertans now live their lives. Family Law Reform has identified a number of areas where the courts' jurisdiction and powers within family law could be consolidated or updated.		ALRI's Reports by and large exclude from consideration constitutional and other issues relating to court structure, the assignment of court jurisdiction and court procedures: RD18.1, pp. 10-11. This being said, the ALRI recommendations are designed with the idea that a single body of substantive law would apply no matter in what court a proceeding is brought and, further, that within the existing court structure the Provincial Court would have the broadest jurisdiction over family law that is constitutionally allowable. ALRI also made recommendations with respect to procedural powers that are necessary to the effective exercise by the courts of family law jurisdiction.

## 4.1 Provincial Court Jurisdiction to Make and Enforce Support Orders

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
2	Alberta Justice proposes that the Provincial Court continue to have jurisdiction to make and enforce support orders but that the requirement for the court to find matrimonial fault be eliminated.	RD18.3, Rec. 33.3: (1) Any court having jurisdiction over child support should be able to make, vary and enforce its own orders. (2) The <i>MEA</i> should be amended to confer the same powers of enforcement on courts with jurisdiction over child support to the fullest extent constitutionally allowable.	AGREE. The summary procedure provided in the <i>Domestic Relations Act</i> , Part 4, for obtaining spousal or child support is based on the out-dated notion of desertion. The jurisdiction is restricted to married persons and their children. The procedural approach is quasi-criminal. Both substantive and procedural modernization is desirable.
3	It is further proposed that the Provincial Court's jurisdiction expand to include persons in conjugal and other interdependent relationships that do not involve marriage and all children of such interdependent relationships.		AGREE with respect to marriage-like relationships between two people of the opposite or same sex, and with respect to children in any situation in which an adult has a child support obligation or guardianship, custody or access is in issue.  DISAGREE with respect to “other independent relationships” and limiting jurisdiction over children to the children of persons in conjugal and other interdependent relationships.
4	There is currently some judicial debate over whether or not a person has to be a guardian before the Provincial Court can make an access order. The proposed new law will clearly give the Provincial Court jurisdiction to make an access order in favour of someone who is not a guardian.	RD18.4, Rec. 35.4: A non-guardian with access to a child should have the powers, responsibilities and rights agreed to by the custodial guardian or ordered by the court.	AGREE. See 3. Guardianship, Custody and Access, line 83.

## 4.2 Securing Payments

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
5	The Alberta Law Reform Institute recommends that legislation give the courts the same broad range of powers for child support as it has for spousal support. This would include the following:	RD18.3, Rec. 27.3: RD18.3, Rec. 27.3: Alberta legislation should confer the same broad powers on the court with respect to child support that it confers with respect to spousal support, including the power to order (a) periodic payments [RFD No. 18.2, Recommendation No. 18.2 at 137] (b) lump sum payments, [RFD No. 18.2, Recommendation No. 19.2 at 144] (c) security for payment, [RFD No. 18.2, Recommendation No. 20.2 at 147]	AGREE: ALRI RD18.3, Rec. 27.3.
6		(d) the transfer or settlement of property. [RFD No. 18.2, Recommendation No. 21.2 at 150] (e) the payment of premiums on a life insurance policy, pension plan or other benefit plan and designation of the child as beneficiary or the assignment of a life insurance policy to the child, [RFD No. 18.2, Recommendation No. 23.2 at 152]	
7		(f) the revocation of an irrevocable designation of a beneficiary under a life insurance policy, pension plan or other benefit plan, [RFD No. 18.2, Recommendation No. 24.2 at 152] (g) remedies that protect against gifts or transfers of property for inadequate consideration, or [RFD No. 18.2, Recommendation No. 25.2 at 154]	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
8		(h) on application and on notice to all persons who may be entitled to be added as parties to the proceeding, exclusive possession of the family home and use of household goods to a parent for the benefit of the child. [RFD No. 18.2, Recommendation No. 22.2 at 151].	
9	<ul style="list-style-type: none"> <li>• Upon or after making a support order, the court for the purpose of securing payments due and to become due thereafter, may by order to any of the following: <ul style="list-style-type: none"> <li>▪ Charge specified property or a specified interest in property with the payments.</li> </ul> </li> </ul>	RD18.2, Rec. 20.2: Alberta legislation should provide that: (1) Upon or after making a spousal support order the court, for the purpose of securing payments due and to become due thereafter, may by order do any or all of the following: (a) charge specified property or a specified interest in property with the payments, ...	AGREE. Embraces ALRI RD18.2, Rec. 20.2(1)(a) and (2) and RD18.3, Rec. 27.3(c) (see line 5 above).
10	Upon default in payment of the amount charged on property, the court may:	(2) Upon default in payment of an amount charged on property under paragraph (a) of subsection (1), the court may	
11	a. appoint a receiver of rents, profits or other money receivable from the property or interest.	(a) appoint a receiver of rents, profits or other money receivable from the property or interest, or	AGREE.
12	b. Order the sale of the property or interest upon notice to all persons having an interest in it.	(b) order sale of the property or interest upon notice to all persons having an interest in it, and	AGREE.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
13	c. In the event described in either paragraph (a) or (b), direct, upon satisfaction of any accrued liability, that any surplus be paid into court as security for any future obligation under the order of support or may make such other directions as it thinks fit and just.	(c) in the event described in either paragraph (a) or (b), direct, upon satisfaction of any accrued liability, that any surplus be paid into court as security for any future obligation under the order of support or may make such other directions as it thinks fit and just.	AGREE.
14	<ul style="list-style-type: none"> <li>■ Order the party liable under the order of support or other person on his behalf to execute and deliver a mortgage or other security interest charging specified property or a specified interest in property with the payments.</li> <li>■ Order the party liable under the order or any other person on his behalf to convey specified property or a specified interest in property with the payments.</li> <li>■ Suspend, amend, vary or discharge an order made under this section and provide for amendment, discharge and substitution of any security provided under it.</li> </ul>	<p>RD18.2, Rec. 20.2: Alberta legislation should provide that:</p> <p>(1) Upon or after making a spousal support order the court, for the purpose of securing payments due and to become due thereafter, may by order do any or all of the following:</p> <ul style="list-style-type: none"> <li>(b) order the party liable under the order of support or other person on his behalf to execute and deliver a mortgage or other security instrument charging specified property or a specified interest in property with the payments,</li> <li>(c) order the party liable under the order or other person on his behalf to convey specified property or a specified interest in property to a trustee upon specified trusts, and</li> <li>(d) suspend, amend, vary or discharge an order made under this section and provide for amendment, discharge and substitution of any security provided under it.</li> </ul>	AGREE. Embraces ALRI RD18.2, Rec. 20.2(1)9b) and RD18.3, Rec. 27.3(c).

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
15	<ul style="list-style-type: none"> <li>Unless the court otherwise orders, an order or security under this section has effect as security only and the person liable under the order of support is and remains personally liable for the payments due and to become due thereafter.</li> </ul>	RD18.2, Rec. 20.2: Alberta legislation should provide that: (3) Unless the court otherwise orders, an order or security under this section has effect as security only and the person liable under the order of support is and remains personally liable for the payments due and to become due thereafter.	AGREE. Embraces ALRI RD18.2, Rec. 20.2(3) and RD18.3, Rec. 27.3(c).
16	<ul style="list-style-type: none"> <li>Security for payment.</li> </ul>		AGREE. Embraces ALRI RD18.2, Rec. 20.2 and RD18.3, Rec. 27.3(c).

***AJ Question:***

**4.2.a. Should the court have the aforementioned powers regarding child and spousal support orders?**

***ALRI Response:***

**Yes: ALRI RD18.2, Rec. 20.2 and RD18.3, Rec. 27.3(c).**

### 4.3 Third Party Payment Orders

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
17	<b><i>Issue for discussion:</i></b> Court authority to order third party payment orders.		

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
18	<b>Background:</b> It has been suggested that legislation empower the court to order payment of spousal support to the court or to a third party for the benefit of the person receiving support.	RD18.2, Rec. 47.2: Alberta legislation should empower the court to order the payment of support into court or to a third party for the benefit of the spouse receiving support.	AGREE. Reflects ALRI RD18.2, Rec. 47.2.
19	Similarly, this legislation would allow the court to order payment of child support directly to a child, to the court or to a third party for the benefit of the child receiving the support.	RD18.3, Rec. 47.3: Alberta legislation should empower the court to order the payment of support directly to the child, or into court or to a third party for the benefit of the child receiving support.	AGREE. Reflects ALRI RD18.3, Rec. 47.3.
20	Concerns regarding such a change include interference with the custodial parent and the ability of a third party to adequately administer the payments.		The court would decide whether to grant or refuse an order on the basis of the evidence before it. It can be assumed that the before making an order, the court would have a good reason to interfere with the custodial parent and be satisfied of the third party's ability to adequately administer the payments.

***AL Questions:***

**4.3.a. Should the court be given discretion to order third party payments or in the case of child support, to order payment directly to the child?**

**4.3.b. Should the court's power in this regard be restricted to only certain types of cases or circumstances?**

***ALRI Responses:***

**Yes: ALRI RD18.2, Rec. 47.2 and RD18.3, Rec. 47.3.**

**No. Rely on the court to exercise its discretion wisely in such matters.**

#### 4.4 Matrimonial Actions

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
21	There are a number of matrimonial laws in Alberta that are out-dated or redundant. Therefore, the following changes are proposed:		
22	<ul style="list-style-type: none"> <li>That the law that enables the court to order a person to resume cohabitation with another person be repealed.</li> </ul>	Rep65, Rec. 1: We recommend that the action for a judgment of restitution of conjugal rights be abolished and that sections 2 to 4 of the <i>DRA</i> be repealed.	AGREE. Adopts Rep65, Rec. 1.
23	<ul style="list-style-type: none"> <li>That the law that allows a person to seek damages for adultery be repealed.</li> </ul>	Rep65, Rec. 4: We recommend that the action for damages for adultery be abolished and that sections 13 and 14 of the <i>DRA</i> be repealed.	AGREE. Adopts Rep65, Rec. 4.
24	<ul style="list-style-type: none"> <li>That the law that allows a married person to seek damages against a third party for inducing that person's spouse to leave the marriage, or for harbouring the deserting spouse, be repealed.</li> </ul>	Rep65, Rec. 5: We recommend that the action for damages for the enticement of a spouse be abolished and that section 40 of the <i>DRA</i> be repealed.	AGREE. Adopts Rep65, Rec. 5 and Rep65, Rec. 6.
25		Rep65, Rec. 6: We recommend that the action for damages for harbouring a spouse be abolished and that sections 41 and 42 of the <i>DRA</i> be repealed.	
26	<ul style="list-style-type: none"> <li>That the law that allows a parent to seek damages against a third party for enticing, harbouring or seducing a child be repealed.</li> </ul>	Rep65, Rec. 7: We recommend that legislation be enacted to abolish the common law actions by a parent for loss of the services of a child due to enticement, harbouring or seduction.	AGREE. Adopts Rep65, Rec. 7.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
27	<ul style="list-style-type: none"> <li>That the ordinary law of gifts be expanded to include engagement gifts, including the engagement ring.</li> </ul>	<p>Rep65, Rec. 9: We recommend that the following provision be enacted in Alberta:</p> <p style="padding-left: 40px;">Where one person makes a gift to another in contemplation of or conditional upon their marriage to each other and the marriage fails to take place or is abandoned, the question of whether or not the failure or abandonment was caused by or was the fault of the donor shall not be considered in determining the right of the donor to recover the gift.</p>	AGREE. Embodies the intent of ALRI Rep65, Rec. 9.
28	<ul style="list-style-type: none"> <li>That the law that allows a person to ask the court to declare the validity of a marriage and grant an injunction against someone making a false claim of marriage be repealed.</li> </ul>	<p>Rep65, Rec. 10: We recommend that the action for jactitation of marriage be abolished and that section 44 of the <i>DRA</i> be repealed.</p>	AGREE. Adopts Rep65, Rec. 10

#### 4.5 Judicial Separation

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
29	<p><i>Issue for discussion:</i> Retention of judicial separation as an option to divorce.</p>		

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
30	<b>Background:</b> Judicial separation legally ends the duty of married persons to live together. Several cases of judicial separation are brought to the courts each year as an alternative to divorce although it is unknown why the parties do so. If the judicial separation option is to be retained, it's proposed that legislation remove the existing matrimonial fault requirements and bring judicial separation in line with the terms and conditions of the federal <i>Divorce Act</i> .	Rep65, Rec. 2: We recommend that the action for a judgment of judicial separation be abolished and that sections 5 to 14 of the <i>DRA</i> be repealed. Implementation of this recommendation should be deferred until appropriate remedies to restrain domestic violence have been introduced.	DISAGREE that judicial separation should be retained. AGREE that if it is retained, legislation should remove the existing matrimonial fault requirements and bring judicial separation in line with the terms and conditions of the federal <i>Divorce Act</i> .
31		Rep65, Rec. 3: We recommend that the following provision be enacted in the <i>DRA</i> : (1) For all purposes of the law of Alberta, including the determination of domicile, a person has a legal personality that is independent, separate and distinct from that of his or her spouse.	AJ does not raise the issue of the need for legislation to ensure that a married woman has full legal capacity.
32		(2) A married person has and shall be accorded legal capacity for all purposes and in all respects as if he or she were an unmarried person and, in particular, has the same right of action in tort against his or her spouse as if they were not married.	
33		(3) The purpose of subsections (1) and (2) is to make the same law apply, and apply equally, to married men and married women and to remove any difference in it resulting from any common law rule or doctrine.	

***AJ Question:***

**4.3.a. Are there reasons why judicial separation should be retained as an option for married persons?**

***ALRI Response:***

**We have recommended that the action for a judgment of judicial separation be abolished and that sections 5 to 14 of the *DRA* be repealed: Rep65, Rec. 2. The abolition would be accompanied by the enactment of a provision making it clear that married men and married women are to be treated equally as independent persons with full legal capacity (Rep65, Rec. 3). Under our recommendations, the entitlements that come with judicial separation under the existing law would be available on the breakdown of the relationship.**

**4.6 Breach of Promise of Marriage**

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
34	<b><i>Issue for discussion:</i></b> Retention of the right to seek damages for failure to keep a marriage commitment.		

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
35	<p><b>Background:</b> Current Alberta family law permits a person to sue another person if that individual fails to keep a promise of marriage. It is believed by many that this law is obsolete given today's societal views of engagement and marriage. Others believe such a law still has value. Alberta Justice suggests that if the law is retained, it should be restricted to claims that seek to recover expenses incurred as a result of the marriage promise.</p>	<p>Rep65, Rec. 8: We recommend that the action for breach of promise of marriage be abolished by express statutory provision.</p>	<p>AGREE that this law is obsolete. DISAGREE that such a law still has value. AGREE that if the law is retained, it should be restricted to claims that seek to recover expenses incurred as a result of the marriage promise.</p>

***AJ Question:***

**4.4.a. Should the right to sue over breach of promise of marriage be retained? If so, should such claims be restricted to recovering expenses?**

***ALRI Response:***

**No, the right to sue should not be retained: ALRI Rep65, Rec. 8. Yes, if the right to sue is retained, claims should be restricted to recovering expenses.**

#### 4.7 Jury Act

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
36	<p><b>Issue for discussion:</b> Appropriateness of a family law matter going to jury trial.</p>		

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
37	<b>Background:</b> The Jury Act currently allows a family law matter to go to trial before a jury. The Unified Family Court Task Force questioned the appropriateness of trial by jury for such matters.		ALRI did not look at this issue.

***AJ Question:***

4.7.a. Should family law cases only be heard by a judge and never by jury trial?

***ALRI Response:***

**Yes. Family law cases should only be heard by a judge. In cases involving children, we have concerns about the potential of jury trials to exacerbate conflict, contrary to the child’s best interests. We also have concerns about the inappropriate use of jury trial by a party with a controlling personality to gain an unfair advantage by prolonging the proceeding, building up costs, and giving that party more clout in negotiations. (We did not consider this matter in our earlier work.)**

## 4.8 Matrimonial Property Act

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
38	<i>Issue for discussion:</i> Estate application by a surviving spouse.		
39	<b>Background:</b> It is proposed that the <i>Matrimonial Property Act</i> be amended so that upon the death of a spouse, the surviving spouse can seek the division of property acquired over the course of the marriage even if the spouses continued to reside together until death. The rights of the surviving spouse under the <i>Matrimonial Property Act</i> would be in addition to the rights of the surviving spouse under the will of the deceased spouse or upon intestacy.		AGREE. ALRI made recommendations to allow a surviving spouse to seek division of property acquired over the course of the marriage on the death of a spouse in Report No. 83 (May 2000).

***AJ Question:***

**4.8.a. Should a surviving spouse have at least the same rights of equal division of matrimonial property as a spouse has under the *Matrimonial Property Act* when there has been a breakdown of the marriage?**

***ALRI Response:***

**Yes: ALRI Report No. 83 (May 2000).**

## 4.9 Life Insurance and Pension Plans

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
40	<i>Issue for discussion:</i> Court authority to order designation of a spouse or child as beneficiary.		
41	<p><b>Background:</b> The Alberta Law Reform Institute recommends that a court be given the authority to order a spouse or a parent who has a life insurance policy, pension plan, other benefit plan, or death benefits under a pension plan to:</p> <ul style="list-style-type: none"> <li>• Continue to pay the premiums and designate the other spouse or child as the beneficiary under the policy or plan, either irrevocably or for such a period as is fixed by the order.</li> </ul>	<p>RD18.2, Rec. 23.2: Alberta legislation should authorize a court to order a spouse who has a life insurance policy, or death benefits under a pension plan or other benefit plan</p> <p>(a) to continue to pay the premiums and designate the other spouse as the beneficiary under the policy or plan, either irrevocably or for such period as is fixed by the order, ...</p>	<p>AGREE. This is ALRI RD18.2, Rec. 23.2(a) and RD18.3, Rec. 27.3(e).</p>
42		<p>RD18.3, Rec. 27.3: Alberta legislation should confer the same broad powers on the court with respect to child support that it confers with respect to spousal support, including the power to order</p> <p>(e) the payment of premiums on a life insurance policy, pension plan or other benefit plan and designation of the child as beneficiary ... [RFD No. 18.2, Recommendation No. 23.2 at 152]</p>	
43	<ul style="list-style-type: none"> <li>• Assign his or her life insurance policy to the other spouse or child.</li> </ul>	<p>RD18.2, Rec. 23.2: Alberta legislation should authorize a court to order a spouse who has a life insurance policy, or death benefits under a pension plan or other benefit plan</p> <p>(b) to assign his or her life insurance policy to the other spouse.</p>	<p>AGREE. This is ALRI RD18.2, Rec. 23.2 and RD18.3, Rec. 27.3(e).</p>

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
44		RD18.3, Rec. 27.3: Alberta legislation should confer the same broad powers on the court with respect to child support that it confers with respect to spousal support, including the power to order (e) ... or the assignment of a life insurance policy to the child, [RFD No. 18.2, Recommendation No. 23.2 at 152]	
45	• Order that an irrevocable designation of a beneficiary be revoked.	RD18.2, Rec. 24.2: Alberta legislation should authorize a court to order that an irrevocable designation of a beneficiary under a policy of life insurance, pension plan or other benefit plan be revoked.	AGREE. This is ALRI RD18.2, Rec. 24.2 and RD18.3, Rec. 27.3(f).
46		RD18.3, Rec. 27.3: Alberta legislation should confer the same broad powers on the court with respect to child support that it confers with respect to spousal support, including the power to order (f) the revocation of an irrevocable designation of a beneficiary under a life insurance policy, pension plan or other benefit plan, [RFD No. 18.2, Recommendation No. 24.2 at 152]	
47	The effectiveness of this recommendation with respect to public pension plans may be an issue as there is no provision in the Employment Pension Plan Act for the irrevocable designation of a beneficiary, although the regulations provide that a matrimonial property order would prevail over the member's entitlement to benefits under the plan.		

***AJ Questions:***

**4.9.a. Should a court be given the authority to order that a spouse or child be continued as the beneficiary of any pension, benefit or life insurance plan held by a spouse or parent?**

**4.9.b. Should a court be given the authority to revoke an irrevocable designation of a beneficiary under a life insurance policy, pension plan or other benefit plan?**

***ALRI Responses:***

**Yes: ALRI RD18.2, Rec. 23.2(a) and RD18.3, Rec. 27.3(e).**

**Yes. ALRI RD18.2, Rec. 24.2 and RD18.3, Rec. 27.3(f).**

**4.10 Other Court Powers**

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
48	There are a number of other proposed changes to the legislation regarding adjustments to the courts' power and authority. These include:		
	Adding Parties		
49	• Empower the court to add as a party another person who may have an obligation to provide child support to the same independent child.	RD18.3, 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. Adopts RD18.3, Rec. 26.3.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
50	<ul style="list-style-type: none"> <li>Empower the court on its own motion to add a party to guardianship, custody or access proceedings, or require that notice of the proceedings and an opportunity to appear and be heard be given to a person who is not a party. Alternatively, empower the court on its own motion to direct that notice of the proceedings and an opportunity to appear be given to a person who is not a party but who may want to apply to participate in the proceedings and who has a significant connection to the child..</li> </ul>	RD18.4, Rec. 59.4: In proceedings with respect to guardianship, custody or access, the court should have power, on its own motion, to add a party to the proceedings, or to require that notice of the proceedings and an opportunity to appear and be heard be given to a person who is not a party.	AGREE. Adopts RD18.3, Rec. 59.4.
Conditional Orders			
51	<ul style="list-style-type: none"> <li>Empower the court to order the payment of spousal or child support for a definite or indefinite period or until the happening of a specified event. The court may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.</li> </ul>	RD18.2, Rec. 37.2: Alberta legislation should provide that a court may order the payment of spousal support for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.	AGREE. Adopts RD18.2, Recs. 37.2 and 55.2, RD18.3, Recs. 37.3 and 55.3.
52		RD18.2, Rec. 55.2: Alberta legislation should empower the court to make any provision in an order made in connection with an application for spousal support subject to such terms and conditions as the court deems proper.	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
53		RD18.3, Rec. 37.3: Alberta legislation should provide that a court may order the payment of child support for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.	
54		RD18.3, Rec. 55.3: Alberta legislation should empower the court to make any provision in an order made in connection with an application for child support subject to such terms and conditions as the court deems proper.	
55	• Empower the court to make a guardianship, custody or access order for a definite or indefinite period or until the happening of a specified event. The court may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.	RD18.4, Rec. 55.4: The court should have power to make a guardianship, custody or access order for a definite or indefinite period or until the happening of a specified event.	AGREE. Adopts RD18.4, Recs. 55.4 and 45.4.
56		RD18.4, Rec. 45.4: The court should have power to make a guardianship, custody or access order on such terms, conditions or restrictions as the court thinks fit and just.	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
	Consent Orders		
57	<ul style="list-style-type: none"> <li>Empower the court, where the parties consent to a spousal support order, to grant a consent order without holding a hearing. Such an order has the same force and effect as an order made after a hearing.</li> </ul>	RD18.2, Rec. 29.2: (1) Where the parties consent to a spousal support order, the court in its discretion may grant a consent order without holding a hearing and such an order has the same force and effect as an order made after a hearing.	AGREE. Adopts RD18.2, Rec. 29.2(1).
58	<ul style="list-style-type: none"> <li>Empower the court, where the parties consent to a child support order and the court is satisfied that the order is in the child’s best interests, to grant a consent order without holding a hearing. Such an order has the same force and effect as an order made after a hearing.</li> </ul>	RD18.3, Rec. 29.3: (1) Where the parties consent to a child support order and the court is satisfied that the order is in the child’s best interests, the court in its discretion may grant a consent order without holding a hearing and such an order has the same force and effect as an order made after a hearing.	AGREE. Adopts RD18.3, Rec. 29.3(1).
59	<ul style="list-style-type: none"> <li>Empower the court, where the parties consent to a guardianship, custody or access order, to grant a consent order without holding a hearing. Such an order has the same force and effect as an order made after a hearing.</li> </ul>	RD18.4, Rec. 47.4: (1) Where the parties consent to a guardianship, custody or access order and the court is satisfied that the order is in the child’s best interests, the court in its discretion may grant a consent order without holding a hearing and such an order has the same force and effect as an order made after a hearing.	AGREE. Adopts RD18.4, Rec. 47.4(1).
60	<ul style="list-style-type: none"> <li>Enable a court granting a spousal support, child support or a guardianship, custody or access order to incorporate in its order all or part of a provision in a written agreement previously made by the parties.</li> </ul>	RD18.2, Rec. 29.2: (2) A court granting a spousal support order may incorporate in its order all or part of a provision in a written agreement previously made by the parties.	AGREE. Adopts RD18.2, Rec. 29.2, RD18.3, Rec. 29.3 and RD18.4, Rec. 47.4.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
61		RD18.3, Rec. 29.3: (2) A court granting a child support order may incorporate in its order all or part of a provision in a written agreement previously made by the parties.	
62		RD18.4, Rec. 47.4: (2) A court granting a guardianship, custody or access order may incorporate in its order all or part of a provision in a written agreement previously made by the parties.	
	Costs		
63	• Empower the court to make an order with respect to the payment of costs.	RD18.2, Rec. 56.2: Alberta legislation should empower the court to make an order with respect to the payment of costs. [spousal support]	AGREE. Adopts RD18.2, Rec. 56.2, RD18.3, Rec. 56.3 and RD18.4, Rec. 63.4.
64		RD18.3, Rec. 56.3: Alberta legislation should empower the court to make an order with respect to the payment of costs. [child support]	
65		RD18.4, Rec. 63.4: Alberta legislation should empower the court to make an order with respect to the payment of costs. [CGCA]	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
66	<ul style="list-style-type: none"> <li>• Provide the court discretion, on an application for interim spousal support, child support or guardianship, custody and access, when it thinks it fit and just to do so, to make an order:               <ul style="list-style-type: none"> <li>• Requiring one spouse to make a payment or payments to or for the benefit of the other party on account of interim costs and disbursements of and incidental to the application.</li> </ul> </li> </ul>	RD18.2, Rec. 57.2: Alberta legislation should give the court discretion, on an application for interim support, when it thinks it fit and just to do so, to make an order requiring one spouse to make a payment or payments to or for the benefit of the other party on account of interim costs and disbursements of and incidental to the application.	AGREE. Adopts RD18.2, Rec. 57.2 and RD18.3, Rec. 57.3.
67		RD18.3, Rec. 57.3: Alberta legislation should give the court discretion, on an application for interim support, when it thinks it fit and just to do so, to make an order requiring one party to make a payment or payments to or for the benefit of the child, a parent or another party on account of interim costs and disbursements of and incidental to the application.	
68	<ul style="list-style-type: none"> <li>• Requiring one party to make a payment or payments to or for the benefit of the child, a parent or another party on account of interim costs and disbursements of and incidental to the application.</li> </ul>	RD18.4, Rec. 64.4: Alberta legislation should give the court discretion, on an application for an interim order, when it thinks it fit and just to do so, to make an order requiring one party to make a payment or payments to or for the benefit of the child, a parent or another party on account of interim costs and disbursements of and incidental to the application.	AGREE. Adopts RD18.4, Rec. 64.4.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
	Death		
69	<ul style="list-style-type: none"> <li>Provide that a spousal or child support order survives the death of the spouse or party having the support obligation except where the court directs to the contrary and subject to a subsequent order made pursuant to the <i>Family Relief Act</i>.</li> </ul>	RD18.2, Rec. 39.2: Alberta legislation should provide that a spousal support order survive the death of the spouse having the support obligation except where the court directs to the contrary and subject to a subsequent order made pursuant to the <i>Family Relief Act</i> .	AGREE. Adopts RD18.2, Rec. 29.2 and RD18.3, Rec. 38.3.
70		RD18.3, Rec. 38.3: Alberta legislation should provide that a child support order survive the death of a parent having a support obligation except where the court directs to the contrary and subject to a subsequent order made pursuant to the <i>Family Relief Act</i> .	
71	<ul style="list-style-type: none"> <li>Provide that a spousal or child support order terminate on the death of the spouse or child receiving support, except where the court expressly declares otherwise, but that arrears of support accumulated while the spouse or child was alive continue to be enforceable.</li> </ul>	RD18.2, Rec. 40.2: Alberta legislation should provide that a spousal support order terminate on the death of the spouse receiving support, except where the court expressly declares otherwise, but that arrears of support accumulated while the spouse was alive continue to be enforceable.	AGREE. Adopts RD18.2, Rec. 40.2 and RD18.3, Rec. 39.3.
72		RD18.3, Rec. 39.3: Alberta legislation should provide that a child support order terminate on the death of the child receiving support, except where a court expressly declares otherwise, but that arrears of support accumulated while the child was alive continue to be enforceable.	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
	Disclosure		
73	<ul style="list-style-type: none"> <li>Provide that in an application for a spousal or child support order, or on the written request of one of the spouses or parties not more than once a year after the making of a spousal or child support order, each spouse or party shall serve on the other and file with the court a financial statement verified by oath or statutory declaration in the manner and form prescribed by the rules of court.</li> </ul>	<p>RD18.2, Rec. 48.2: Alberta legislation should provide that:</p> <p>(1) In an application for a spousal support order or on the written request of one of the spouses not more than once a year after the making of a spousal support order, each spouse shall serve on the other and file with the court a financial statement verified by oath or statutory declaration in the manner and form prescribed by the rules of the court.</p>	AGREE. Adopts RD18.2, Rec. 43.2(1) and RD18.3, Rec 48.3(1).
74		<p>RD18.3, Rec. 48.3: Alberta legislation should provide that:</p> <p>(1) In an application for a child support order or on the written request of one of the parties not more than once a year after the making of a child support order, each party shall serve on the others and file with the court a financial statement verified by oath or statutory declaration in the manner and form prescribed by the rules of the court.</p>	
75	<ul style="list-style-type: none"> <li>Where, in an application for a spousal or child support order, a spouse or party fails to provide a financial statement, a court on application by the other spouse or party may either set the application down for a hearing and proceed to judgment or order that the documents be provided.</li> </ul>	<p>RD18.2, Rec. 48.2: Alberta legislation should provide that:</p> <p>(2) Where, in an application for a spousal support order, a spouse fails to comply with subsection (1), a court on application by the other spouse, may</p> <p>(a) set the application down for a hearing and proceed to judgment, or</p> <p>(b) order that the documents be provided.</p>	AGREE. Adopts RD18.2, Rec. 48.2(2) and RD18.3, Rec. 48.3(2).

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
76		RD18.3, Rec. 48.3: Alberta legislation should provide that: (2) Where, in an application for a child support order, a party fails to comply with subsection (1), a court on application by another party, may (a) set the application down for a hearing and proceed to judgment, or (b) order that the documents be provided.	
77	• Where the court proceeds to a hearing, it may draw an adverse inference against the spouse or party who failed to comply and impute income to that spouse or party in such amount as it considers appropriate.	RD18.2, Rec. 48.2: Alberta legislation should provide that: (3) Where the court proceeds to a hearing, it may draw an adverse inference against the spouse who failed to comply with subsection (1) and impute income to that spouse in such amount as it considers appropriate.	AGREE. Adopts RD18.2, Rec. 48.2(3) and RD18.3, Rec. 48.3(3).
78		RD18.3, Rec. 48.3: Alberta legislation should provide that: (3) Where the court proceeds to a hearing, it may draw an adverse inference against the party who failed to comply and impute income to that party in such amount as it considers appropriate.	
79	• Where a spouse or party fails to comply with an order that the documents be provided, the court may: a) Strike out any of the spouse or party's pleadings.	RD18.2, Rec. 48.2: Alberta legislation should provide that: (4) Where a spouse fails to comply with an order that the documents be provided, the court may (a) strike out any of the spouse's pleadings,	AGREE. Adopts RD18.2, Rec. 48.2(4) and RD18.3, Rec. 48.3(4).
80	b) Make a contempt order against the spouse or party.	(b) make a contempt order against the spouse,	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
81	c) Proceed to a hearing, in the course of which it may draw an adverse inference against the spouse or party and impute income to that spouse or party in such an amount as it considers appropriate.	(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	
82	d) Award costs in favour of the other spouse or party up to an amount that fully compensates the other spouse or party for all costs incurred in the proceedings.	(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.	
83		RD18.3, Rec. 48.3: Alberta legislation should provide that: (4) Where a party fails to comply with an order that the documents be provided, the court may (a) strike out any of the party’s pleadings, (b) make a contempt order against the party, (c) proceed to a hearing, in the course of which it may draw an adverse inference against the party and impute income to that party in such amount as it considers appropriate, and (d) award costs in favour of another party up to an amount that fully compensates the other party for all costs incurred in the proceedings.	
84	• Where, after a spousal or child support order has been made, a spouse or party fails to comply with the written request of the other spouse or party not more than once a year after the making of a spousal support order or child support order to provide financial information, the court, on application, may:	RD18.2, Rec. 48.2: Alberta legislation should provide that: (5) Where, after a spousal support order has been made, a spouse fails to comply with the written request of the other spouse not more than once a year after the making of a spousal support order to provide financial information, the court, on application, may	AGREE. Adopts RD18.2, Rec. 48.2(5) and RD18.3, Rec. 48.3(5).

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
85	a) Consider the non-complying spouse or party 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	(a) consider the non-complying 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	
86	b) Make an order requiring the other spouse or party to provide the required documents.	(b) make an order requiring the other spouse to provide the required documents.	
87		RD18.3, Rec. 48.3: Alberta legislation should provide that: (5) Where, after a child support order has been made, a party fails to comply with the written request of the other party not more than once a year after the making of a child support order to provide financial information, the court, on application, may (a) consider the non-complying party 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 party to provide the required documents.	
88	• The court may, on application by the other spouse or party, in addition to or in substitution for any other penalty to which the non-complying spouse or party is liable, order that spouse or party to pay to the applicant an amount not exceeding \$5,000.	RD18.2, Rec. 48.2: Alberta legislation should provide that: (6) The court may, on application by the other spouse, in addition to or in substitution for any other penalty to which the non-complying spouse is liable, order that spouse to pay to the applicant an amount not exceeding \$5,000.	AGREE. Adopts RD18.2, Rec. 48.2(6) and RD18.3, Rec. 48.3(6).

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
89		RD18.3, Rec. 48.3: Alberta legislation should provide that: (6) The court may, on application by another party, in addition to or in substitution for any other penalty to which the non-complying party is liable, order that party to pay to the applicant an amount not exceeding \$5,000.	
Third Party [Disclosure]			
90	<ul style="list-style-type: none"> <li>Provide that in an application for a spousal or child support order, the court may order that the employer, partner or principal, as the case may be, of a spouse, parent or other person having a spousal or child support obligation, provide the spouse, child, other parent and any other party with any information, accountings or documents that a party is entitled to request under disclosure laws.</li> </ul>	RD18.2, Rec. 49.2: Alberta legislation should provide that: (1) In an application for a spousal support order, the court may order that the employer, partner or principal of one spouse, as the case may be, provide the other spouse with any information, accountings or documents that a spouse is entitled to request under Recommendation No. 48.2.	AGREE. Appears to adopt RD18.2, Rec. 49.2 and RD18.3, Rec. 49.3 on <b>financial disclosure</b> and RD18.2, Rec. 51.2 and RD18.3, Rec. 51.3 and RD18.4, Rec. 60.4 on <b>locating</b> a respondent or child. However, the AJ Workbooks do not clarify what is meant by the reference to “any information, accountings or documents that a party is entitled to request under disclosure laws” nor does AJ indicate where these laws are to be found.
91		RD18.3, Rec. 49.3: Alberta legislation should provide that: (1) In an application for a child support order, the court may order that the employer, partner or principal, as the case may be, of a parent or other person having a child support obligation, provide the child, other parent and any other party with any information, accountings or documents that a party is entitled to request under Recommendation 48.3.	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
92		RD18.2, Rec. 51.2: Alberta legislation should provide that: (1) The court may, on motion, make an order under subsection (2) if it appears to the court that, in order to make an application for spousal support, the moving party needs to learn or confirm the proposed respondent's whereabouts.	
93		RD18.3, Rec. 51.3: Alberta legislation should provide that: (1) The court may, on motion, make an order under subsection (2) if it appears to the court that, in order to make an application for child support, the moving party needs to learn or confirm the proposed respondent's whereabouts.	
94		RD18.4, Rec. 60.4: Alberta legislation should provide that: (1) The court may, on motion, make an order under subsection (2) if it appears to the court that, in order to make an application for a child guardianship, custody or access order, the applicant needs to learn or confirm the whereabouts of the proposed respondent or child.	And see Withholding, Removal and Production of Child: RD18.4, Rec. 26.4 and RD18.4, Rec. 27.4 (lines 180 and 181 below).

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
95		RD18.2, Rec. 51.2: Alberta legislation should provide that: (2) The order shall require the person or public body to whom it is directed to provide the court or the moving party with any information that is shown on a record in the person's or public body's possession or control and that indicates the proposed respondent's place of employment, address or location.	
96		RD18.3, Rec. 51.3: Alberta legislation should provide that: (2) The order shall require the person or public body to whom it is directed to provide the court or the moving party with any information that is shown on a record in the person's or public body's possession or control and that indicates the proposed respondent's place of employment, address or location.	
97		RD18.4, Rec. 60.4: Alberta legislation should provide that: (2) The order shall require the person or public body to whom it is directed to provide the court or the applicant with any information that is shown on a record in the person's or public body's possession or control and that indicates the place of employment, address or location of the proposed respondent or child.	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
98	<ul style="list-style-type: none"> <li>Provide that a return purporting to be signed by the employer, partner or principal may be received in evidence as prima facie proof of its contents</li> </ul>	RD18.2, Rec. 49.2: Alberta legislation should provide that: (2) A return purporting to be signed by the employer, partner or principal may be received in evidence as <i>prima facie</i> proof of its contents.	AGREE. Adopts RD18.2, Rec. 49.2(2) and RD18.3, Rec. 49.3(2).
99		RD18.3, Rec. 49.3: Alberta legislation should provide that: (2) A return purporting to be signed by the employer, partner or principal may be received in evidence as <i>prima facie</i> proof of its contents.	
100	[Crown Bound]	RD18.2, Rec. 52.2: Alberta legislation should provide that: The sections provided for by Recommendation No. 49.2 or Recommendation No. 51.2 (a) bind the Crown in right of Alberta, and (b) in so doing, prevail over the Alberta <i>Freedom of Information and Privacy Act</i> .	AJ does not include reference to ALRI RD18.2, Rec. 52.2 and ALRI RD18.3, Rec. 52.3 providing that the recommendations on disclosing financial information and the location of a respondent or child would bind the Crown. This may be the result of the reference to “any information any information, accountings or documents that a party is entitled to request under disclosure laws” in line 90 above, but that is not apparent on the face of the AJ Workbooks.
101		RD18.3, Rec. 52.3: Alberta legislation should provide that: The sections provided for by Recommendation No. 49.3 or Recommendation No. 51.3 (a) bind the Crown in right of Alberta, and (b) in so doing, prevail over the <i>Freedom of Information and Privacy Act</i> .	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
102	<ul style="list-style-type: none"> <li>Provide that upon an application for a spousal or child support order, a court may order that any information, accountings or documents ordered to be provided and any examination or cross-examination thereon, be treated as confidential and not form part of the public record of the court.</li> </ul>	<p>RD18.2, Rec. 50.2: Alberta legislation should provide that: Upon an application for a spousal support order, a court may order that any information, accountings or documents ordered to be provided under Recommendation No. 48.2 or Recommendation No. 49.2, and any examination or cross-examination thereon, shall be treated as confidential and shall not form part of the public record of the court.</p>	AGREE. Adopts ALRI RD18.2, Rec. 50.2 and RD18.3, Rec. 50.3.
103		<p>RD18.3, Rec. 50.3: Alberta legislation should provide that: Upon an application for a child support order, a court may order that any information, accountings or documents ordered to be provided under Recommendation No. 48.3 or Recommendation No. 49.3, and any examination or cross-examination thereon, shall be treated as confidential and shall not form part of the public record of the court.</p>	
<i>Divorce Act Orders</i>			
104	<ul style="list-style-type: none"> <li>Provide that the jurisdiction of the court under Alberta law to award or vary a spousal support, child support or child custody or access order continues in effect unless and until the court makes an order with respect to spousal support, child support or child custody or access in a divorce proceeding under the <i>Divorce Act</i>.</li> </ul>	<p>RD18.2, Rec. 41.2: Alberta legislation should provide that: (1) The jurisdiction of the court under Alberta law to award or vary spousal support continues in effect unless and until the court makes an order with respect to spousal support in a divorce proceeding under the <i>Divorce Act</i> (Canada).</p>	AGREE. Adopts ALRI RD18.2, Rec. 41.2(1), RD18.3, Rec. 41.3(1) and RD18.4, Rec. 56.4(1).

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
105		RD18.3, Rec. 41.3: Alberta legislation should provide that: (1) The jurisdiction of the court under Alberta law to award or vary child support continues in effect unless and until the court makes an order with respect to child support in a divorce proceeding under the <i>Divorce Act</i> (Canada).	
106		RD18.4, Rec. 56.4: Alberta legislation should provide that: (1) The jurisdiction of the court under Alberta law to make or vary a child custody or access order continues in effect unless and until the court makes an order with respect to child custody or access in a divorce proceeding under the <i>Divorce Act</i> (Canada).	
107	<ul style="list-style-type: none"> <li>• Provide that the court with jurisdiction in a divorce proceeding under the <i>Divorce Act</i> be allowed to determine the amount of arrears owing under a spousal support or child support order granted under provincial law and make an order respecting that amount at the same time as it makes an order under the <i>Divorce Act</i>.</li> </ul>	RD18.2, Rec. 41.2: Alberta legislation should provide that: (2) The court with jurisdiction in a divorce proceeding under the <i>Divorce Act</i> (Canada) may determine the amount of arrears owing under a spousal support order granted under provincial law and make an order respecting that amount at the same time as it makes an order under the <i>Divorce Act</i> (Canada).	AGREE. Adopts ALRI RD18.2, Rec. 41.2(2) and RD18.3, Rec. 41.3(2).

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
108		RD18.3, Rec. 41.3: Alberta legislation should provide that: (2) The court with jurisdiction in a divorce proceeding under the <i>Divorce Act</i> (Canada) may determine the amount of arrears owing under a child support order granted under provincial law and make an order respecting that amount at the same time as it makes an order under the <i>Divorce Act</i> (Canada).	
109	• Provide that, if a marriage is terminated by divorce or a judgment of nullity and no order is made with respect to spousal support, child support, or child custody or access in the divorce or nullity proceedings, an order for support made under provincial law continues in force according to its terms, as does the jurisdiction of the court under provincial law.	RD18.2, Rec. 41.2: Alberta legislation should provide that: (3) If a marriage is terminated by divorce or judgment of nullity and no order with respect to spousal support is made in the divorce or nullity proceedings, an order for support made under provincial law continues in force according to its terms, as does the jurisdiction of the court under provincial law.	AGREE. Adopts ALRI RD18.2, Rec. 41.2(3), RD18.3, Rec. 41.3(3) and RD18.4, Rec. 56.4(2).
110		RD18.3, Rec. 41.3: Alberta legislation should provide that: (3) If a marriage is terminated by divorce or judgment of nullity and no order with respect to child support is made in the divorce or nullity proceedings, an order for support made under provincial law continues in force according to its terms, as does the jurisdiction of the Court under provincial law.	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
111		RD18.4, Rec. 56.4: Alberta legislation should provide that: (2) If a marriage is terminated by divorce or judgment of nullity and no order with respect to child custody or access is made in the divorce or nullity proceedings, an order for child custody or access made under provincial law continues in force according to its terms, as does the jurisdiction of the Court under provincial law.	
112	• Provide that, unless the court orders otherwise, a child guardianship, custody or access order should remain in force until it is replaced by a subsequent order granted by a court of competent jurisdiction.	RD18.4, Rec. 57.4: Unless the court orders otherwise, a child guardianship, custody or access order should remain in force until it is replaced by a subsequent order granted by a court of competent jurisdiction.	AGREE. Adopts ALRI RD18.4, Rec. 57.4.
Exclusive Possession of Family Home			
113	• Empower the court, in conjunction with proceedings for spousal or child support, or for child guardianship, custody or access, on application and on notice to all persons who may be entitled to be added as parties to the proceedings on the application, to grant an order for exclusive use for all or part of the family home and exclusive use of any or all household goods.	RD18.2, Rec. 22.2: Alberta should statutorily empower the court, in proceedings for spousal support, to grant orders for exclusive possession of the matrimonial home, or part thereof, and exclusive use of any or all household goods.	AGREE. Appears to adopt ALRI RD18.2, Rec. 22.2, RD18.3, Rec. 27.3 and RD18.4, Rec. 48.4. However, query whether there is a difference between “exclusive use of all or part of the family home” and “exclusive possession of the matrimonial home.”

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
114		RD18.2, Rec. 28.2: <i>The Matrimonial Property Act</i> , s. 23, and the <i>Personal Property Security Act</i> , ss. 23 and 26, as modified by the recommendations in ALRI RFD No. 14 on <i>The Matrimonial Home</i> , should apply where an application is brought in a spousal support proceeding.	AJ does not refer to RD18.2, Rec. 28.2, RD 18.3, Rec. 27.3 and RD18.4, Rec. 48.4. [The recommendations in ALRI RFD No. 14 on <i>The Matrimonial Home</i> are reproduced as Appendix D to this chart.]
115		RD18.3, Rec. 27.3: Alberta legislation should confer the same broad powers on the court with respect to child support that it confers with respect to spousal support, including the power to order (h) on application and on notice to all persons who may be entitled to be added as parties to the proceeding, exclusive possession of the family home and use of household goods to a parent for the benefit of the child. [RFD No. 18.2, Recommendation No. 22.2 at 151].	
116		RD18.4, Rec. 48.4: In conjunction with proceedings for child guardianship, custody or access, on application and on notice to all persons who may be entitled to be added as parties to the proceedings on the application, the court should have power to grant an order for exclusive use of all or part of the family home and exclusive use of any or all household goods for the benefit of a child.	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
	Fraudulent Preferences		
117	<ul style="list-style-type: none"> <li>Provide that spousal support legislation include specific provisions to protect against gifts or transfers of property owned by a spouse for inadequate consideration.</li> </ul>	RD18.2, Rec. 25.2: Alberta spousal support legislation should include specific provisions to protect against gifts or transfers of property owned by a spouse for inadequate consideration.	AGREE. Adopts RD18.2, Rec. 25.2.
118	<ul style="list-style-type: none"> <li>Empower the court with the same broad powers with respect to child support that legislation confers on the court with respect to spousal support, including the power to order remedies that protect against gifts or transfers of property for inadequate consideration.</li> </ul>	RD18.3, Rec. 27.3: Alberta legislation should confer the same broad powers on the court with respect to child support that it confers with respect to spousal support, including the power to order (g) remedies that protect against gifts or transfers of property for inadequate consideration, or [RFD No. 18.2, Recommendation No. 25.2 at 154]	AGREE. Adopts RD18.3, Rec. 27.3.
	General Powers		
119	<ul style="list-style-type: none"> <li>Empower the court to make any provision in an order made in connection with an application for spousal support or child support subject to such terms and conditions as the court deems proper.</li> </ul>	RD18.2, Rec. 55.2: Alberta legislation should empower the court to make any provision in an order made in connection with an application for spousal support subject to such terms and conditions as the court deems proper.	AGREE. Adopts RD18.2, Rec. 55.2 and RD18.3, Rec. 55.3.
120		RD18.3, Rec. 55.3: Alberta legislation should empower the court to make any provision in an order made in connection with an application for child support subject to such terms and conditions as the court deems proper.	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
	Interim Orders		
121	<ul style="list-style-type: none"> <li>Provide that the court has discretion to make an interim spousal or child support order that will be in effect in accordance with its terms until the order is varied or the application for a spousal or child support order or an appeal is adjudicated.</li> </ul>	RD18.2, Rec. 46.2: The court should have discretion to make an interim support order that will be in effect in accordance with its terms until the order is varied or the application for a spousal support order or an appeal is adjudicated.	AGREE. Adopts RD18.2, Rec. 46.2 and RD18.3, Rec. 45.3.
122		RD18.3, Rec. 45.3: Subject to Recommendation 46.2, an interim support order should remain in effect in accordance with its terms until the order is varied or the application for a child support order or an appeal is adjudicated.	
123	<ul style="list-style-type: none"> <li>Provide that the court consider the same factors and pursue the same objectives in an application for an interim spousal or child support order as it would in an application for a spousal or child support order.</li> </ul>	RD18.2, Rec. 34.2: The court should consider the same factors and pursue the same objectives in an application for an interim spousal support order as it would in an application for a spousal support order.	AGREE. Adopts RD18.2, Rec. 34.2 and RD18.3, Rec. 34.3.
124		RD18.3, Rec. 34.3: The court should consider the same factors and pursue the same objectives in an application for an interim child support order that it would in an application for a child support order.	
125	<ul style="list-style-type: none"> <li>Provide that the court have the same discretion and power of disposition in an application for an interim spousal or child support order that it has on an application for a spousal or child support order.</li> </ul>	RD18.2, Rec. 35.2: The court should have the same discretion and power of disposition in an application for an interim support order that it has on an application for a spousal support order.	AGREE. Adopts RD18.2, Rec. 35.2 and RD18.3, Rec. 35.3. Enacted with respect to spousal support in DRA 1999 amendments.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
126		RD18.3, Rec. 35.3: The court should have the same discretion and other powers of disposition in an application for an interim child support order that it has on an application for a child support order.	
127	<ul style="list-style-type: none"> <li>• Provide that the same provisions that govern the duration of child support orders should apply to the duration of interim child support orders.</li> </ul>	RD18.3, Rec. 44.3: The same provisions that govern the duration of child support orders should apply to the duration of interim child support orders.	
128	<ul style="list-style-type: none"> <li>• Empower the court to make an interim guardianship, custody or access order, including an <i>ex parte</i> interim order, as the court sees fit.</li> </ul>	RD18.4, Rec. 52.4: The court should have power to make an interim guardianship, custody or access order, including an <i>ex parte</i> interim order, as the court sees fit.	AGREE. Adopts RD18.4, Rec. 52.4.
129	<ul style="list-style-type: none"> <li>• Provide that, on application for an interim guardianship, custody or access order, that the court consider the same factors and apply the same criteria as it would on the application in the main proceeding.</li> </ul>	RD18.4, Rec. 53.4: On an application for an interim order, the court should consider the same factors and apply the same criteria as it would on the application in the main proceeding.	AGREE. Adopts RD18.4, Rec. 53.4.
130	<ul style="list-style-type: none"> <li>• Provide that, on application for an interim guardianship, custody or access order, that the court have the same discretion and powers of disposition as it would have on the application in the main proceeding.</li> </ul>	RD18.4, Rec. 54.4: On an application for an interim order, the court should have the same discretion and powers of disposition as it would on the application in the main proceeding.	AGREE. Adopts RD18.4, Rec. 54.4.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
	Land Titles Registration		
131	<ul style="list-style-type: none"> <li>Provide that spousal support orders may be registered in any land titles office in accordance with the authority provided in the <i>Maintenance Enforcement Act</i>.</li> </ul>	RD18.2, Rec. 26.2: Spousal support orders should be registrable in any land titles office in accordance with the authority provided in section 17 of the <i>MEA</i> .	AGREE. Adopts RD18.4, Rec. 26.2. Enacted in DRA 1999 but with different wording.
132	<ul style="list-style-type: none"> <li>Provide that, where the court makes an order to secure spousal support payments, that order or instrument may be registered in the same way as a mortgage of the property described in it and does not affect an interest in the property acquired in good faith and for value without notice before such registration.</li> </ul>	RD18.2, Rec. 27.2: Alberta legislation should provide that where the court makes an order under subsection (1) of Recommendation No. 20.2, that order or instrument (a) is registrable in the same way as a mortgage of the property described in it, and (b) does not affect an interest in the property acquired in good faith and for value without notice before such registration.	AGREE. Adopts RD18.2, Rec. 27.2.
133	<ul style="list-style-type: none"> <li>Provide that a court order charging real property for security of payment under a child support order or an instrument giving effect to the charging order is able to be registered.</li> </ul>	RD18.3, Rec. 28.3: Alberta legislation should provide that a court order charging real property for security of payment under a child support order or an instrument giving effect to the charging order is registrable. [RFD No. 18.2, Recommendation No. 27.2 at 156]	AGREE. Adopts RD18.3, Rec. 28.3.
	Lump Sum Payments		
134	<ul style="list-style-type: none"> <li>Empower the court to, on application for spousal support, make an order requiring one spouse to make a lump sum payment to or for the benefit of the other spouse.</li> </ul>	RD18.2, Rec. 19.2: Alberta legislation should authorize the court, on an application for spousal support, to make an order requiring one spouse to make a lump sum payment to or for the benefit of the other spouse.	AGREE. Adopts RD18.2, Rec. 19.2. Enacted in DRA 1999.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
135	<ul style="list-style-type: none"> <li>Provide the court with the same broad powers with respect to child support that it confers with respect to spousal support including the power to order lump sum payments.</li> </ul>	RD18.3, Rec. 27.3: Alberta legislation should confer the same broad powers on the court with respect to child support that it confers with respect to spousal support, including the power to order (b) lump sum payments, [RFD No. 18.2, Recommendation No. 19.2 at 144]	AGREE. Adopts RD18.3, Rec. 27.3.
Periodic Payments			
136	<ul style="list-style-type: none"> <li>Empower the court, on application for spousal support, to make an order requiring one spouse to make periodic payments to the other spouse. This power should not be limited to the joint lives of the spouses.</li> </ul>	RD18.2, Rec. 18.2: (1) Alberta legislation should authorize the court, on an application for spousal support, to make an order requiring one spouse to make periodic payments to the other spouse. (2) The power should not be limited to the joint lives of the spouses.	AGREE. Adopts RD18.2, Rec. 18.2. Rec. 18.2(1) was enacted in DRA 1999.
137	<ul style="list-style-type: none"> <li>Provide the court with the same broad powers with respect to child support that it confers with respect to spousal support including the power to order periodic payments.</li> </ul>	RD18.3, Rec. 27.3: Alberta legislation should confer the same broad powers on the court with respect to child support that it confers with respect to spousal support, including the power to order (a) periodic payments [RFD No. 18.2, Recommendation No. 18.2 at 137]	AGREE. Adopts RD18.3 Rec. 27.3(a).

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
	Private Court Proceedings & Publication Bans		
138	<ul style="list-style-type: none"> <li>Provide that the court has discretion to direct some degree of privacy in family proceedings provided that, if the government is a party to the proceedings, that the government may not be excluded. This discretion should include prohibiting publication of information or broadcast of identifying information relating to applications in family proceedings.</li> </ul>	RD18.2, Rec. 53.2: Staying within <i>Charter</i> boundaries, Alberta legislation should give the court discretion to direct some degree of privacy in family proceedings.	AGREE. Adopts RD18.2, Recs. 53.2 and 54.2, RD18.3, Recs. 53.3 and 54.3, and RD18.4, Recs. 61.4 and 62.4.
139		RD18.2, Rec. 54.2: The discretion conferred on the court to direct some degree of privacy in family proceedings should include the discretion to prohibit the publication or broadcasting of information filed in a spousal support proceeding or produced in court.	
140		RD18.3, Rec. 53.3: Staying within Charter boundaries, Alberta legislation should give the court discretion to direct some degree of privacy in family proceedings.	
141		RD18.3, Rec. 54.3: The discretion conferred on the court to direct some degree of privacy in family proceedings should include the discretion to prohibit the publication or broadcasting of information relating to applications in family proceedings.	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
142		RD18.4, Rec. 61.4: Staying within Charter boundaries, Alberta legislation should give the court discretion to direct some degree of privacy in family proceedings.	
143		RD18.4, Rec. 62.4: The discretion conferred on the court to direct some degree of privacy in family proceedings should include the discretion to prohibit the publication or broadcasting of information relating to applications in family proceedings.	
Reconciliation			
144	• Provide that a spousal support order terminate upon cohabitation having been resumed by the parties and continued for a period of more than 90 days.	RD18.2, Rec. 42.2: A spousal support order should terminate upon cohabitation having been resumed by the parties and continued for a period of more than ninety days.	AGREE. Adopts RD18.2, Rec. 42.2.
145	• Provide that a child support order terminate where a child’s parents commence and continue, or resume and continue, to cohabit for a period of more than 90 days.	RD18.3, Rec. 42.3: A child support order should terminate where a child’s parents commence and continue, or resume and continue, to cohabit for a period of more than ninety days.	AGREE. Adopts RD18.3, Rec. 42.3.
Retroactive Application of Legislation			
146	• Legislation should expressly state that the new spousal support, child support and child guardianship, custody and access laws should operate retroactively.	RD18.2, Rec. 59.2: The legislation enacting the new spousal support law should expressly state that it operates retroactively.	AGREE. Adopts RD18.2, Rec. 59.2, RD18.3, Rec. 59.3 and RD18.4, Rec. 66.4.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
147		RD18.3, Rec. 59.3: The legislation enacting the new child support law should expressly state that it operates retroactively.	
148		RD18.4, Rec. 66.4: The legislation enacting the new child guardianship, custody and access law should expressly state that it operates retroactively.	
	Retroactive Orders		
149	• Provide the court with the discretion to order that spousal or child support be paid in respect of any period before the date of the order, including the period of entitlement occurring before the commencement of the proceedings.	RD18.2, Rec. 36.2: 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. [spousal support]	AGREE. Adopts RD18.2, Rec. 36.2 and RD18.3, Rec. 36.3.
150		RD18.3, 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. [child support]	
	Rules of Court		
151	• Provide that, where statute or regulation does not provide for a specific practice or procedure, the Provincial Court may apply the Alberta Rules of Court in family matters.	RD18.2, Rec. 58.2: Where statute or regulation does not provide for a specific practice or procedure, the Provincial Court may apply the Alberta Rules of Court in family law matters.	AGREE. Adopts RD18.2 Rec. 58.2, RD18.3, Rec. 58.3 and RD18.4, Rec. 65.4.

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
152		RD18.3, Rec. 58.3: Where statute or regulation does not provide for a specific practice or procedure, the Provincial Court may apply the Alberta Rules of Court in family law matters.	
153		RD18.4, Rec. 65.4: Where statute or regulation does not provide for a specific practice or procedure, the Provincial Court should have discretion to apply the Alberta Rules of Court in family law matters.	
154		RD18.4, Rec. 58.4: The Rules of Court and Forms should facilitate joint applications for guardianship, custody and access.	AJ does not mention ALRI RD18.4., Rec. 58.4.
	Transfer or Settlement of Property		
155	<ul style="list-style-type: none"> <li>Provide that the court may, in granting an application for spousal support, make an order requiring a spouse to convey or transfer property or an interest in property to or for the benefit of the other spouse. Such an order may authorize another person to execute the conveyance or transfer on behalf of the party, in order to satisfy the spousal support obligation.</li> </ul>	<p>RD18.2, Rec. 21.2: Alberta legislation should provide that:</p> <p>(1) In granting an application for spousal support, the court may make any one or more of the following orders:</p> <p>(a) an order requiring one spouse to convey or transfer property or an interest in property to or for the benefit of the other spouse, or</p>	AGREE. Adopts RD18.2, Rec. 21.2(1)(a) and (2).
156		<p>(b) an order varying, suspending or terminating an ante-nuptial or post-nuptial settlement made on the spouses, but not so as to affect adversely the interest of a third party benefitted by the settlement.</p>	AJ does not mention RD 18.2, Rec. 21.2(b).

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
157		(2) An order under subsection (1) requiring a party to convey or transfer property may authorize another person to execute the conveyance or transfer on behalf of the party, in order to satisfy the spousal support obligation.	
158	<ul style="list-style-type: none"> <li>Provide the court with the same broad powers with respect to child support that it confers with respect to spousal support including the power to order the transfer or settlement of property.</li> </ul>	RD18.3, Rec. 27.3: Alberta legislation should confer the same broad powers on the court with respect to child support that it confers with respect to spousal support, including the power to order (d) the transfer or settlement of property. [RFD No. 18.2, Recommendation No. 21.2 at 150]	AGREE. Adopts RD18.3, Rec. 27.3(d).
	Variations		
159	<ul style="list-style-type: none"> <li>Empower the court to make an order discharging, varying or suspending, prospectively and retroactively, a spousal support order or any provision thereof if the court is satisfied that:</li> </ul>	RD18.2, Rec. 30.2: Alberta legislation should empower the court to make an order discharging, varying or suspending, prospectively or retroactively, a spousal support order or any provision thereof if the court is satisfied that	AGREE. Adopts RD18.2, Rec. 30.2.
160	<ul style="list-style-type: none"> <li>A change in the condition, means, needs or other circumstances of either spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order.</li> </ul>	(a) a change in the condition, means, needs or other circumstances of either spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, or	
161	<ul style="list-style-type: none"> <li>Evidence of a substantial nature that was not available at the previous hearing has become available.</li> </ul>	(b) evidence of a substantial nature that was not available on the previous hearing has become available,	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
162	In making the variation order, the court shall take that change of circumstance or evidence into consideration.	and, in making the variation order, the court shall take that change of circumstance or evidence into consideration.	
163	<ul style="list-style-type: none"> <li>Empower the court to make an order discharging, varying or suspending, prospectively or retroactively, a child support order or any provision thereof if the court is satisfied that:</li> </ul>	RD18.3, Rec. 30.3: (1) Alberta legislation should empower the court to make an order varying, suspending or discharging, prospectively or retroactively, a child support order or any provision thereof if the court is satisfied that	AGREE. Adopts RD18.3, Rec. 30.3(1).
164	<ul style="list-style-type: none"> <li>A change of circumstances has occurred since the making of the child support order or the last variation order made in respect of that order.</li> </ul>	(a) a change of circumstances has occurred since the making of the child support order or the last variation order made in respect of that order, or	
165	<ul style="list-style-type: none"> <li>Evidence of a substantial nature that was not available at the previous hearing has become available.</li> </ul>	(b) evidence of a substantial nature that was not available on the previous hearing has become available,	
166	In making the variation order, the court shall take that change of circumstance or evidence into consideration.	and, in making the variation order, the court shall take that change of circumstance or evidence into consideration.	
167	<p>A change of circumstances is:</p> <ul style="list-style-type: none"> <li>In the case where the amount of the child support includes a determination made in accordance with child support guidelines, a change in circumstances that would result in a different child support order or any provision thereof.</li> </ul>	RD18.3, Rec. 30.3: (2) For the purposes of subsection (1), a change of circumstances is (a) in the case where the amount of child support includes a determination made in accordance with the applicable table in the child support guidelines, a change in circumstances that would result in a different child support order or any provision thereof,	AGREE. Adopts RD18.3, Rec. 30.3(2).

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
168	<ul style="list-style-type: none"> <li>In the case where the amount of child support does not include a determination made in accordance with child support guidelines, a change in the condition, means, needs or other circumstances of either parent or of any child who is entitled to support.</li> </ul>	(b) in the case where the amount of child support does not include a determination made in accordance with a table in the child support guidelines, a change in the condition, means, needs or other circumstances of either parent or of any child who is entitled to support, or	
169	<ul style="list-style-type: none"> <li>In the case of an order made before the child support guidelines come into force, the date of the coming into force of those guidelines.</li> </ul>	(c) in the case of an order made before the child support guidelines come into force, the date of the coming into force of those guidelines.	
170	<ul style="list-style-type: none"> <li>Empower the court to make an order to vary, suspend or discharge a guardianship, custody or access order if the court is satisfied that: <ul style="list-style-type: none"> <li>A change in the condition, means, needs or other circumstances of the child or guardian has occurred since the making of the custody order or the last variation order made in respect of that order</li> </ul> </li> </ul>	RD18.4, Rec. 49.4: The court should have power to vary, suspend or discharge a guardianship, custody or access order where the court is satisfied that <ul style="list-style-type: none"> <li>(a) there has been a change in the condition, means, needs or other circumstances of the child or any guardian occurring since the making of the custody order or the last variation order made in respect of that order, or</li> </ul>	AGREE. Adopts RD18.4, Rec. 49.4.
171	<ul style="list-style-type: none"> <li>Evidence of a substantial nature that was not available on the previous hearing has become available.</li> </ul>	(b) evidence of a substantial nature that was not available on the previous hearing has become available.	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
172	<ul style="list-style-type: none"> <li>Provide that the court consider the same factors and pursue the same objectives in an application to vary a spousal, child support or guardianship, custody and access order as it would in an application for a spousal, child support or guardianship, custody and access order.</li> </ul>	RD18.2, Rec. 31.2: The court should consider the same factors and pursue the same objectives in an application to vary a spousal support order as it would in an application for a spousal support order.	AGREE. Adopts RD18.2, Rec. 31.2, RD18.3, Rec. 31.3 and RD18.4, Rec. 50.4.
173		RD18.3, Rec. 31.3: The court should consider the same factors and pursue the same objectives in an application to vary a child support order as it would in an application for a child support order.	
174		RD18.4, Rec. 50.4: On an application for a variation order, the court should consider the same factors and apply the same criteria as it would on an original application.	
175	<ul style="list-style-type: none"> <li>Provide that the court have the same discretion and powers of disposition in an application to vary a spousal, child support or guardianship, custody and access order that it has in respect to an application for a spousal, child support or guardianship, custody and access order.</li> </ul>	RD18.2, Rec. 32.2: The court should have the same discretion and powers of disposition in an application to vary a spousal support order that it had in the original application for a spousal support order.	AGREE. Adopts RD18.2, Rec. 32.2, RD18.3, Rec. 32.3 and RD18.4, Rec. 51.4.
176		RD18.3, Rec. 32.3: The court should have the same discretion and powers of disposition in an application to vary a child support order as it has with respect to an application for a child support order.	

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
177		RD18.4, Rec. 51.4: On an application for a variation order, the court should have the same discretion and powers of disposition as it would on an original application.	
178	• Provide that the provisions that govern the duration of spousal or child support orders should apply to the duration of variation orders.	RD18.2, Rec. 45.2: The provisions that govern the duration' of spousal support orders should apply to the duration of variation orders.	AGREE. Adopts RD18.2, Rec. 45.2 and RD18.3, Rec. 43.3.
179		RD18.3, Rec. 43.3: The provisions that govern the duration of child support orders should apply to the duration of variation orders.	

### [Unlawful Withholding or Removal of Child]

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
180		RD18.4, Rec. 26.4: Alberta legislation should contain provisions to prevent the unlawful withholding or removal of a child by either parent or any third party.	AJ does not mention ALRI RD18.4, Rec. 26.4. ALRI's recommendation carries forward a provision in the existing <i>DRA</i> .

**[Production of Child]**

	ALBERTA JUSTICE – FAMILY LAW REFORM PROJECT (FLRP)	ALRI – FAMILY LAW RECOMMENDATIONS	ALRI COMMENTS
181		RD18.4, Rec. 27.4: The court should have discretion to grant or refuse an order for the production of a child depending on the circumstances of the child and merits of the application.	AJ does not mention ALRI RD18.4, Rec. 27.4.



## **THE MATRIMONIAL HOME**

Report for Discussion No. 14

March 1995

## **PART III — LIST OF RECOMMENDATIONS**

### **RECOMMENDATION 1**

Spouses should be entitled to equal possession of the matrimonial home, regardless of the state of title, and without the need to obtain a court order. Spouses may therefore not expel each other from the home. This right of possession should be capable of being protected by the filing of a caveat in the Land Titles Office. (p. 29)

### **RECOMMENDATION 2**

When granting an order under Part 2 of the Matrimonial Property Act, a court should have regard to the following factors:

- (a) The interests of any dependent children, taking into account such factors as (i) the health of the children and their need for continued stability, and (ii) the impact that a move might have on the ability of the children to attend school or participate in extra-curricular activities.
- (b) The financial position of the spouses, including their ability to continue to maintain the property as well as to continue to dwell under separate roofs.
- (c) Any existing orders pertaining to property or support.
- (d) The health and safety of the family, including the apprehension of violence.
- (e) The special character of the neighbourhood, including such considerations as the presence of friends, relatives, members of a specific ethnic community.
- (f) The date when the property was acquired.
- (g) The historical ties of the parties to the property in question.
- (h) The extent to which the property was acquired by one of the spouses by gift or special effort.
- (i) The effect of an order on any other person who holds an interest in the home.
- (j) Any informal agreement between the parties as to the home.
- (k) Any other fact or circumstance that is relevant. (p. 34)

### **RECOMMENDATION 3**

An order for possession of the home can be made to cover the whole or any part of the premises. However, an order should not be made granting possession of part of the premises to one of the spouses, and part to the other, where there is an apprehension of violence. (p. 35)

#### **RECOMMENDATION 4**

Children should not be entitled to seek orders for possession under Part 2 of the Matrimonial Property Act. (p. 36)

#### **RECOMMENDATION 5**

When granting an order of possession under Part 2, a court should continue to be able to grant orders allowing for the possession of household goods. (p. 37)

#### **RECOMMENDATION 6**

When granting an order for possession under Part 2 of the Matrimonial Property Act, the court may also:

(a) determine any rights of spouses that may arise as a result of the occupancy of a matrimonial home and postpone any rights of the spouse who is the owner or lessee, including the right to apply for partition and sale or to dispose of or encumber the matrimonial home

(b) authorize the disposition or encumbrance of the interest of the spouse in a matrimonial home subject to the right of exclusive possession contained in the order

(c) fix the obligation to repair and maintain a matrimonial home

(d) fix the obligation to pay, and the responsibility for, any liabilities whatsoever that may arise out of the occupation of the matrimonial home

(e) direct a spouse to whom exclusive possession of a matrimonial home is given to make any payment to the other spouse that is prescribed in the order.

(f) grant such other orders as are necessary for the proper management or maintenance of the property covered by the order. (p. 39)

#### **RECOMMENDATION 7**

The right to a life estate under the Dower Act should be replaced with a right of occupancy governed by Part 2 of the Matrimonial Property Act. The right should arise automatically on the death of the owning spouse and should continue until the surviving spouse dies, or until a court orders otherwise. Such an order should not be granted unless a court is convinced that the benefits of the home to the widowed spouse are substantially outweighed by the benefits that would accrue to those making a claim. The burden of proof should be a heavy one to provide the widowed spouse with security of tenure in the home. The factors to be taken into account should include financial and non-financial considerations. (p. 60)

#### **RECOMMENDATION 8**

The powers of a court to grant ancillary orders under Part 2 of the Matrimonial Property Act should be applicable to situations in which a widowed spouse remains in the home on the death of the owning spouse. Unless varied by court order, the surviving spouse should be responsible for all current expenses and repairs. (p. 61)

## **RECOMMENDATION 9**

A surviving spouse enjoying a right of occupancy under Part 2 of the Matrimonial Property Act should also be entitled to possession of the household furnishings and appliances normally found in the house, and one automobile (unless the surviving spouse owns an automobile). This right should arise automatically on the death of the owning spouse and should continue until the surviving spouse dies, or until a court orders otherwise. Such an order should not be granted unless a court is convinced that the benefits of to the widowed spouse in relation to the personal property are substantially outweighed by the benefits that would accrue to those entitled to make a claim. A court may also grant an order of possession in favour of the widowed spouse in relation to other “household goods” (as that term is defined in the Matrimonial Property Act). (p. 66)

## **RECOMMENDATION 10**

Matrimonial misconduct should not constitute a bar to the enjoyment of any of the rights contained in Part 2 of the Matrimonial Property Act. (p. 69)

## **RECOMMENDATION 11**

The current definition of a “disposition” should be amended to include leases of less than three years. When a lease of less than three years is granted without compliance with the consent provisions, the lease is valid, unless it can be shown that the tenant was aware that consent was required and had no reason to believe that the consent was given. If the lease cannot be set aside, a court should have the power to order that all or part of the rents should be paid to the spouse whose consent was not obtained. The court should also have the power to direct that the lease be terminated at the earliest opportunity allowable under the terms of the lease. (p. 95)

## **RECOMMENDATION 12**

The law should continue to require a consent and acknowledgment; the use of a standard form should be continued. That form should include both the consent and acknowledgment. It should clearly state that the rights being surrendered are those contained in Part 2 of the Matrimonial Property Act, as reformed, and that a given transaction is not effective until the document is completed. (p. 98)

## **RECOMMENDATION 13**

(1) The law should require that the consent and acknowledgment form be properly completed. Minor defects should be ignored; the absence of a signature should not be treated as a minor defect.

(2) Where the formalities are not complied with properly, the law should provide that the transaction is void for all purposes. The law should also provide that the doctrine of estoppel does not apply to prevent any party from relying on the absence of a spousal consent.

(3) When the form is properly completed, the voluntariness of the consent can still be challenged by demonstrating that the consent was in fact given under duress. (p. 103)

## **RECOMMENDATION 14**

The law governing the time at which a wrongful disposition of the matrimonial home can be set aside should conform with the general law governing land titles registration. Occupancy rights should not be classified as overriding interests under the land titles system. (p. 107)

## **RECOMMENDATION 15**

(1) An action for damages should be available as a remedy for a wrongful disposition of any kind. This cause of action should not be extinguished by divorce.

(2) The quantum of damages to be awarded should be left to the discretion of the court. In assessing damages, a court should take into account all of the circumstances of the case, including the costs of relocation and comparable accommodation, and any inconvenience caused to a spouse or the children of the marriage. In the case of a wrongful mortgage, a court can assess damages at the level of the monies advanced, together with any incidental affects associated with the mortgage.

(3) Damages awarded to compensate for the loss of occupancy rights on death should be ordered to be secured against property, or paid into court, to be paid to the plaintiff-spouse only if that spouse survives the defendant. (p. 116)

## **RECOMMENDATION 16**

A spouse who suffers a loss of occupancy rights owing, at least in part, to the operation of the land titles system, should be able to seek compensation from the assurance fund in accordance with the general law governing that fund. (p. 117)

## **RECOMMENDATION 17**

A wrongful disposition of the matrimonial home should not give rise to quasi-criminal liability under provincial law. (p. 118)

## **RECOMMENDATION 18**

The provisions governing dispensing with consent under the Dower Act should be incorporated into the consent rules under Part 2 of the Matrimonial Property Act. (p. 120)

## **RECOMMENDATION 19**

(1) Spouses should be free to enter into a contract releasing their rights to occupancy of the matrimonial home on the death of the owning spouse. When such a contract is validly entered into the court should not be empowered to grant an order conferring possession on death unless it can be shown (i) that there has been a substantial change of circumstance since the entering into of the agreement that imposes a hardship on a spouse, or (ii) that the agreement would not be in the best interests of any children of the marriage.

(2) When a contract releasing rights of occupancy on death has been entered into and the owning spouse subsequently dies, the surviving spouse should be able to remain in the home for a transitional period. That period should be three months.

(3) An order that overrides the terms of a contract releasing occupancy rights should not be granted where to do so would affect the rights of a third party who acquired an interest in the home under a valid disposition of the home. (p. 130)

## **RECOMMENDATION 20**

Spouses should be allowed to contract out of their rights of occupation arising prior to death. However, a contract entered into prior to separation should be unenforceable. Such a contract would be variable on the same grounds as contracts affecting occupancy rights on death. Third parties acting on the faith of a valid contract should not be prejudiced by a judicial alteration of the contract. (p. 132)

## **RECOMMENDATION 21**

Part 1 of the Matrimonial Property Act should be amended to provide explicitly that an order under Part 2 can be made, even where no separate application under that Part has been launched. (p. 137)

## **RECOMMENDATION 22**

Where the homestead is seized and sold under execution, the exempt portion of the proceeds of sale should be placed in the hands of the judgment debtor in accordance with general principles of exemptions law. (p. 144)

## **RECOMMENDATION 23**

The current definitions of “homestead” under the Dower Act and “matrimonial home” under the Matrimonial Property Act should be replaced by a single definition. (p. 152)

## **RECOMMENDATION 24**

The “matrimonial home” should be defined to include (a) lot in a subdivision, and (b) a “residential unit” as defined by the Condominium Property Act together with the owner’s interest in the common areas of the condominium. (p. 154)

## **RECOMMENDATION 25**

The “matrimonial home” should be defined to include an ascertainable parcel of land of not more than one quarter section of land on which the home is situated. (p. 154)

## **RECOMMENDATION 26**

(1) Where the matrimonial home is situated on a parcel of greater than a quarter section, the court should be empowered to delineate an area as the home of not more than 160 acres.

(2) Where the home straddles two or more parcels, each of these parcels should be treated as the home, unless a court orders a delineation, or orders compensation in lieu of occupancy rights.

(3) Where the parcel of land on which the home is located is a quarter section, that area should constitute the home, whether contained within a municipal area or otherwise. (p. 155)

## **RECOMMENDATION 27**

- (1) The “matrimonial home” should be defined to include a suite.
- (2) When an order of exclusive possession is made under Part 2 of the Matrimonial Property Act in relation to a rental suite, excluding the original tenant, that spouse in whose favour the order has been made should be deemed to be an assignee of the interest of the other spouse in the lease.
- (3) When an order of exclusive possession is made excluding the original tenant, the obligations of that tenant to the landlord will continue only until the earliest time at which the tenant could have terminated the lease following the granting of the order.
- (4) The Matrimonial Property Act should provide for notice to the landlord of an order made under Part 2, and the effects of that order on the rights of the landlord that are affected by the order. (p. 158)

## **RECOMMENDATION 28**

- (1) The “matrimonial home” should be defined to include a mobile home.
- (2) When a mobile home is located on a rented site, the recommendations concerning tenant liability and notice to the landlord that apply to residential tenancies should apply in relation to the mobile home site tenancy.
- (3) As a general rule, the provisions governing the disposition of the matrimonial home should apply to a mobile home. However, a disposition of a mobile home is valid, unless it can be shown that the transferee was aware that consent was required and had no reason to believe that the consent was given.
- (4) A spouse should be able to file a notice in the Personal Property Register, identifying a mobile home as a matrimonial home. That notice should specify that the consent requirements that apply. As under the present law, a spouse should also be able to file an order for possession.
- (5) Once an order for possession of a mobile home has been made, neither spouse should be allowed to relocate the home without either a consent or a court order having first been obtained. (p. 161)

## **RECOMMENDATION 29**

The “matrimonial home” should be defined to include a part of business premises (other than a farm) used as living accommodation. (p. 163)

## **RECOMMENDATION 30**

Rights over mines and minerals should not be considered to be part of the matrimonial home. (p. 165)

## **RECOMMENDATION 31**

A home owned by a third party and one of the spouses should fall within the definition of the matrimonial home. The rights conferred on the other spouse under a possession order should be no greater than those held by the owning spouse. The

interests of the third party should be a consideration when an order for possession is sought. (p. 166)

### **RECOMMENDATION 32**

The definition of the matrimonial home should not include property owned by a corporation. (p. 170)

### **RECOMMENDATION 33**

The current requirement under the Matrimonial Property Act that a property falls within the definition of the matrimonial home only if lived in by both spouses should be retained. (p. 171)

### **RECOMMENDATION 34**

A property should not cease to be a matrimonial home because a subsequent matrimonial home has been acquired. The election procedures currently contained in the Dower Act where a spouse dies owning more than one homestead should apply. The general rules governing releases and contracts should apply to all matrimonial homes. (p. 174)

### **RECOMMENDATION 35**

- (1) The reforms proposed in the Report should be given prospective application.
- (2) Reform of the law should not affect dower life estates that have vested in possession.
- (3) The new provisions governing consent and the remedies for wrongful dispositions should apply only to dispositions occurring after the reforms become law. However, conduct giving rise to a quasi-criminal offence under the present Dower Act should not be amenable to prosecution after the new law takes effect.
- (4) Agreements made under the Dower Act and Part 2 of the Matrimonial Property Act prior to the coming into force of these reforms should remain binding on the spouses. (p. 178)