



Legal Education
Society of Alberta

62112.00

Effective Legal Support: Matrimonial Property

Edmonton, Alberta

Calgary, Alberta

Chair

Rachel Woynorowski

Daunais McKay + Harms

Calgary, Alberta

Faculty

Nicole McWha

Crerar Badejo Hagen Family Law Group

Edmonton, Alberta

Valerie Omasta

Bell Law Chambers

Edmonton, Alberta

Kenneth Proudman

Miller Boileau Family Law Group

Edmonton, Alberta

Sue Skrip

Richardson Law

Calgary, Alberta

LEGAL EDUCATION SOCIETY OF ALBERTA

These materials are produced by the Legal Education Society of Alberta (LESA) as part of its mandate in the field of continuing education. The information in the materials is provided for educational or informational purposes only. The information is not intended to provide legal advice and should not be relied upon in that respect. The material presented may be incorporated into the working knowledge of the reader but its use is predicated upon the professional judgment of the user that the material is correct and is appropriate in the circumstances of a particular use.

The information in these materials is believed to be reliable; however, LESA does not guarantee the quality, accuracy, or completeness of the information provided. These materials are provided as a reference point only and should not be relied upon as being inclusive of the law. LESA is not responsible for any direct, indirect, special, incidental or consequential damage or any other damages whatsoever and howsoever caused, arising out of or in connection with the reliance upon the information provided in these materials.

This publication may contain reproductions of the Statutes of Alberta and Alberta Regulations, which are reproduced in this publication under license from the Province of Alberta.

© Alberta Queen's Printer, 2019, in the Statutes of Alberta and Alberta Regulations.

The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

© 2019. Legal Education Society of Alberta. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior permission of the Legal Education Society of Alberta.

ISBN-10: 1-55093-712-X
ISBN-13: 978-1-55093-712-1

Disclosure and Evidence Handbook for Family Law Support Staff

Effective Legal Support: Matrimonial Property

LESA LIBRARY

Prepared by:

Ken Proudman

Miller Boileau Family Law Group

Edmonton, Alberta

For presentation in:

Edmonton, Alberta – March 5, 2019

Calgary, Alberta – March 12, 2019



Legal Education
Society of Alberta

DISCLOSURE AND EVIDENCE HANDBOOK FOR FAMILY LAW SUPPORT STAFF

Introduction 2

Disclosure Statements 3

Notice to Disclose Documents 5

 Your Client’s Documents 6

 The Opposing Party’s Documents..... 7

 Sworn Statements of Income, Assets, and Liabilities 9

 Budgets 13

 Business Expense Statements 14

Affidavits and Statements 15

 Format and Exhibits..... 15

 Content..... 17

Undertakings and Questioning Transcripts 17

 Transcripts..... 18

 Undertakings..... 18

Affidavit of Records..... 19

Appendix A – Disclosure Statement 22

Appendix B – Mandatory Documentation 41

Appendix C – Annotated Disclosure Checklist 42

Appendix D – Sworn List of Assets and Liabilities 50

Appendix E – Homework Package 56

Appendix F – Business Expense Statement..... 65

Appendix G – Affidavit of Records..... 79

PowerPoint – Effective Legal Support: Matrimonial Property

INTRODUCTION

This Handbook was created to assist legal support staff to address financial disclosure and evidence issues. It is only meant to be a starting point; each lawyer has their own preferences, circumstances might require a different approach, and laws/procedures often change. Lawyers have complete responsibility for all client business, and have a duty to directly supervise support staff.¹ Non-lawyers cannot forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction.²

Clients often don't see the value in preparing financial disclosure. If a lawyer bills them for many hours addressing, reviewing, and sorting financial disclosure, the client will often become dissatisfied. As a result, lawyers often feel the need to bill for fewer hours than they actually spend attending to financial disclosure. Because of this, your efforts to organize and format disclosure, as well as identify and address any missing disclosure, are fundamental to your law firm's financial success, and usually highly appreciated by your lawyer.

Disclosure generally refers to the exchange of financial documents and forms containing information relating to income, expenses, assets, and liabilities. Although most of us hate assembling these items, and clients typically don't see the value in all this work, exchanging disclosure is critical to a fair settlement. Exchanging this information helps us determine our client's rights, makes settlement agreements more likely to be upheld by the courts, and is invaluable to most negotiations, because settlement is more likely to occur when each side's lawyer has the same information, enabling each of them to give their clients the same legal advice.

Courts and legislators have recognized the importance of financial disclosure, and have implemented procedures to force it to occur. Especially in uniquely vulnerable circumstances, there is a duty to make full and honest disclosure of all relevant financial information.³ For example, courts might refuse to uphold an Agreement where financial disclosure has not occurred, or might set a person's income at a much higher amount for support purposes. Legislation states that parties to a child support application must disclose a minimum amount of financial disclosure relating to their sources of income (see Schedules 1 and 2 of the Disclosure Statement).⁴ Child support orders now contain mandatory paragraphs stating that Income Tax Returns and Notices of Assessment

¹ *Code of Conduct*, Law Society, r 6.1-1

² *Code of Conduct*, Law Society, r 6.1-3(l)

³ *Rick v Brandsema*, 2009 SCC 10 at para 47.

⁴ *Federal Child Support Guidelines*, ss 21, 25

must be exchanged by June 30th of each year. Various procedures have been put in place to facilitate the exchange of financial disclosure, such as Notice to Disclose Applications, applications to produce further documentation, Questionings, and undertakings.

Evidence generally refers to the facts and documents that could ultimately be presented to the judge. Sometimes this takes the form of live witnesses in a trial, although this will more often take the form of Affidavits and Sworn Statements, which are documents containing the facts that the lawyer wants the judge to read (i.e. the client's story). Sometimes there will be a "Questioning", where each lawyer asks the other spouse questions, which are typed into a transcript by a Court Reporter. In Questioning, clients might be asked to "undertake" to provide further documents or look up the answer to questions. In the higher courts, lawyers usually can't repeat facts unless they're contained in some form of evidence that's properly in front of the court using one of the above methods.

Please note that when I refer to a person who owns a business/shares, that includes someone who "**controls**" a **business**. Your lawyer will determine whether this applies, in which case you might find that non-shareholders are providing business-related financial disclosure and Business Expense Statements.

DISCLOSURE STATEMENTS

Financial disclosure exchanged through either a child support application or Notice to Disclose / Application in the Court of Queen's Bench must be contained in a Disclosure Statement, as directed by the Court's Notice to the Profession and Public "Section 21 Disclosure Initiative Information Summary" dated May 19, 2016.

Appendix "A" is an editable and more easy-to-use Disclosure Statement, with additional default/suggested clauses, of which an editable version can also be found at <http://familycounsel.ca/download.php?id=571>

Where a person owns or controls a **business**/shares, I recommend attaching the additional business-related documents and any T5 Slips, as set out in the Mandatory Disclosure form at **Appendix "B"**.