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**EVIDENCE IN FAMILY LAW**

**Harold Niman**

**Release No. 36, February 2019**

This unique resource is structured to follow the evolution of a family law case through trial and appeal and provides detailed analysis regarding how to best obtain, preserve and present evidence. It also examines specialized areas of family law such as Charter litigation and child protection proceedings, looking at how to establish the proper evidentiary framework.

**What's New in this Update:**

This release features updates to the Words and Phrases section and the Terms Legislatively Defined section and new articles in the Issues in Focus section.

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### Highlights Include:

- **Words and Phrases — Agreement — Manitoba** — The respondent [putative father] argues that there is an agreement in this case [as to custody of the child born outside of marriage]: the acquiescence of the respondent to the [applicant mother's] custody of the child since the child's birth. The [*Domestic Relations Act*, R.S.N.W.T. 1988, c. D-8, s. 27(1)], by referring to an agreement, contemplates a mutual accord consciously and voluntarily entered into by the parties ... non-action on the part of one party is not agreement: (*G. (G.) v. H. (J.)* (1995), [1996] N.W.T.R. 154, 1995 CarswellNWT 40 (N.W.T. S.C.) at para. 9 Vertes J.)
- **Terms Legislatively Defined — Community — New Brunswick** — “community” means a geographic unit or group of persons sharing common interests within a geographic unit who provide or receive services on a collective basis; *Family Services Act*, S.N.B. 1980, c. F-2.2, s. 1
- **Issues in Focus — How have courts treated applications for child custody from out-of-province guardians?** — This article is concerned with the situation where the parents have appointed one spouse's brother as the child's guardian and whether that brother could ultimately adopt the child even though he does not reside in the country. The paramount consideration for the court in granting custody of a child is what is in the best interests of the child. Research revealed no apparent trends in the case law that would preclude the person appointed guardian from obtaining a more permanent custody award, provided that aside from the geographical considerations, the award is otherwise in the child's best interests.