

## INDEX

### **ABDUCTION**

criminal offence, 258-259  
extradition, 259-260  
*Hague Convention on the Civil Aspects of International Child Abduction*, 255-259, 260  
parental abduction, 258-259  
prevention, 258

### **ABORIGINAL CHILDREN, see INDIGENOUS CHILDREN**

### **ACCESS, see CUSTODY AND ACCESS**

### **ADOPTION**

*Child, Youth and Family Service Act*,  
changes to, 8  
First Nations children, 56-57  
open, 54-56

### **ALTERNATIVE DISPUTE RESOLUTION, 261-264**

### **BEST INTERESTS OF THE CHILD**

*Charter of Rights and Freedoms*  
generally, 166-167  
rights do not pre-empt, 142,  
154, 155  
child protection vs custody and  
access  
evaluating, 33-34  
generally, 24, 199-201, 207,  
220-223  
test, 25, 28, 201-205  
traditional approach in  
determining custody, 238  
domestic violence, and, 218  
First Nations children, and, 57-58

generally, 19, 137-139, 141, 198, 199  
primary parent model/*status quo*,  
238-240, 240-242  
*status quo*  
determining for purpose of  
child custody, 242-243  
legislation, 240-242  
traditional approach in determining  
custody, 238  
under *Divorce Act* and *Children's  
Law Reform Act*  
common restriction on  
consideration of past  
conduct, 214-217  
generally, 211-213  
meaning of test, 213-214

### **BULLYING**

cyber-bullying, 464-466  
different student groups, and  
gifted, 488  
learning disabilities, 487  
LGBTQ students, 488  
effects, 489  
gender, and, 486-487  
generally, 463, 478-486  
race, ethnicity and immigration,  
489

### **CANADA EVIDENCE ACT**

Bill C-2 amendments, 111, 161  
s. 16.1, children testifying, 76-77

### **CANNABIS, LEGALIZATION OF**

amendments to *Education Act* and  
Policy/Program memoranda  
generally, 490-491  
possession of paraphernalia,  
491-492

- possession of recreational marijuana, 491
- trafficking, 492
- under the influence, 491

medical marijuana, 492

**CHARTER OF RIGHTS AND FREEDOMS**

- arbitrary detention, 177-178
- best interests of the child, 137-139, 141, 142, 153, 165-166
- challenge to s. 43 of *Criminal Code*, 350-357
- child abuse
  - generally, 165-168
  - sexual abuse
    - duty to report, 169-170, 171-172, 431
    - generally, 168-169
    - "recent complaint", 168-169
    - religious orders, 171
    - schools, 169-171
- child protection, 155-159
  - Children's Aid Society's rights when child in care, 157
  - duty to report, 158, 431
  - legal status of children, 156
  - parental rights, 155, 158-159
  - procedural rights of children, 156-157
  - sexual assault, 159-161, 167
- child protection proceedings, and, 143-145
  - government intervention in medical treatment, 148-149, 152-153
  - prosecution, differences between, 152
- civil litigation, privacy rights in, 164-165
- generally, 133-137, 139-154

- medical treatment
  - government intervention in medical treatment of children, 148-149, 152-153
  - government intervention in withdrawal of life support, 153
- parental rights, 137, 141-142, 143-145, 148, 151, 155
- privacy rights
  - civil litigation, in, 164-165
  - schools, in, 161-164
- religious practices, 140-141, 143-144, 148, 152-153
- remedies
  - exclusion of evidence, s. 24(2), 180-181
  - stay of proceedings and reduction of sentence, s. 24(1), 180
- schools
  - generally, 395-405
  - privacy rights in, 161-164
  - sexual assault, 170
- sexual assault, 159-161
- State-funded representation, 154
- unborn children, rights of, 172-176
- waiver of rights, 178-179

**CHILD IN NEED OF PROTECTION, see also CHILD, YOUTH AND FAMILY SERVICES ACT**

- Charter of Rights and Freedoms*, and, 143-145, 155-159, 159-161
- child protection agency
  - investigations and evaluations, 20-21
- legal standards, 18-19
- removing risk, not child, 21-23
- school boards' duties
  - duty of care, 431-439

generally, 427-431  
 sexual assault, *Charter* rights and,  
 159-161  
 statutory protection headings, 11-  
 13  
 what constitutes harm, 13-18  
 when is child in need, 10-11  
 when to report, 19-20

#### **CHILD SUPPORT**

add-ons, 524-526  
 adult children, 510-516  
 amount of support  
   determination of, 504-505  
   variation, 505-510  
 background, 499-501  
*Child Support Guidelines* (Ont.), 501  
 defined, 497  
 disclosure, 526-533  
 enforcement, 547-548  
 entitlement, 501-503  
 extraordinary expenses, 524-526  
*Family Law Act*, powers of court, s.  
 34, 498-499  
 hardship, 522-523  
 high income, discretion regarding,  
 516-521  
 hybrid custody, 537-539  
 imputed income, amount, 524  
 joint custody/shared parent,  
   calculation, 237-238  
 predictability, 546  
 retroactivity, 539-546  
 shared custody, 534-537  
 split custody, 533-534  
 tax consequence changes, 546

#### **CHILD, YOUTH AND FAMILY SERVICES ACT**

abuse, duty to report  
   generally, 1-2, 58-63, 169-170

importance of duty and  
 consequences of not  
 reporting, 63-69  
 alternative dispute resolution, 49-51  
 “apprehend” changed to “bring a  
 child to a place of safety”, 9  
 child defined, 168  
 child in need of protection  
   child protection agency  
     investigations and  
     evaluations, 20-21  
   legal standards, 18-19  
   removing risk, not child, 21-23  
   statutory protection headings,  
   11-13  
   what constitutes harm, 13-18  
   when is child in need, 10-11  
   when to report, 19-20  
 child protection legislation defined,  
 2-3  
 child protection vs custody  
   best interests of the child test  
     evaluating, 33-34  
     generally, 25  
   deemed custody orders, 28-29  
   generally, 24  
   involvement of state in  
     private sphere, 29-32  
     statutory pathway, 25-28  
 children’s and young persons’  
 rights (Part II), 9-10  
 criminal matter, child protection is  
 not  
   child defined, 34-35  
   protection from persons in  
   charge, 35-36  
 “Crown wardship” changed to  
 “extended Society care”, 9  
 custody orders — s. 102, 51-53  
 deemed custody orders under, 207-  
 210  
 dispositions, 45-47

- First Nations children provisions, 56-58  
generally, 1-2, 69-70, 167-168  
intervention, involuntary (Part V), 41-45  
intervention, voluntary  
    generally, 37-39  
    temporary care agreement, 39-40  
    voluntary youth services agreement (VYSA), 40-41, 431  
jurisdiction, 23-24  
key amendments, 8  
open adoption, 54-56  
parent defined, 167-168  
plan of care, 47-48  
preamble, 8  
purpose of Act, 7  
recent legislative developments  
    1999 amendments, 3-5  
    Bill 210 and transformation of child protection regime, 5-7  
report of abuse, Society's analysis of, 36-37  
"Society wardship" changed to "interim Society care", 8  
temporary care agreement, 39-40  
terminology changes  
    "apprehend" to "bring a child to a place of safety", 9  
    "Crown wardship" to "extended Society care", 9  
    "Society wardship" to "interim Society care", 8  
timelines, 48-49  
voluntary intervention  
    generally, 37-39  
    temporary care agreement, 39-40  
    voluntary youth services agreement (VYSA), 40-41  
voluntary youth services agreement (VYSA), 40-41
- CHILDREN'S LAWYER**  
advocacy role, 576  
appointment, 576-579  
as child's lawyer, 576, 577  
assisting court in determining child's best interests, 575  
intervention of, 579-580  
Office of the Children's Lawyer, 574-575
- CRIMINAL CODE**  
application for production of records (s. 278.3), 75, 554-559  
application to *Youth Criminal Justice Act*, 267-268, 279-282, 288-289, 296, 305  
assault (s. 265(1)(a)), 331  
Bill C-2, protection of children and other vulnerable persons  
    generally, 111, 161  
    special procedure and powers (Part XV), 111-113  
Bill S-206, 16, 385  
children's evidence (s. 659), 73  
parental abduction (ss. 281-283), 258-259  
prohibiting self-represented accused from cross-examining child (s. 486.3), 90  
unlawful forcible confinement, child abuse, and (s. 279(2)), 383-384  
use of force justified with children (s. 43)  
    generally, 16, 332-336, 345, 347, 350, 356, 357  
    history, 336-340  
    proposed repeal of, Bill S-206, 16, 385

- teenagers, 369-379
  - use of screens for child witnesses (s. 486.2), 109-111, 160, 165
  - victim impact statements (s. 722), 127-129
  - videotaped evidence (s. 715.1), 105-109, 159, 160
- CROWN WARDSHIP**
- access order terminated, 55
  - Bill 210 and, 54
  - changed to "extended Society care" in *Child, Youth and Family Services Act*, 9
  - generally, 46, 49
  - order, 55, 56
- CUSTODY AND ACCESS**
- abduction
    - criminal offence, 258-259
    - extradition, 259-260
    - Hague Convention on the Civil Aspects of International Child Abduction*, 256-258
    - prevention, 258
  - access
    - decision-making during, 254-255
    - defined, 219-224, 249-252
    - supervised/supervised access centre, 255
  - alternative dispute resolution, 261-264
  - best interests of the child
    - development as primary test, 201-205
    - generally, 201
    - primary parent model, or *status quo*, 238-240, 240-243
    - traditional approach, 238
  - under *Divorce Act* and *Children's Law Reform Act*, 211-217
  - Bill C-78, replacing terms "custody" and "access" as being outdated, 444
  - breakdown of marriage, 185, 196-197
  - child protection, distinguished from 198-201
  - child support, and
    - hybrid custody, 537-539
    - shared custody, 534-537
    - split custody, 533-534
  - children born in/out of wedlock, *Children's Law Reform Act*
    - abolishes distinction, 184
  - custody
    - defined, 198, 219-224
    - joint vs sole, 224-227
  - de facto* custody, 245-246
  - enforcement of orders, 260-261
  - family, changing definition of, 185-186
  - formal arrangements: separation agreements and orders
    - final orders concerning custody, 247
    - interim orders concerning custody, 246-247
    - separation agreements, 246
  - legislation
    - best interest test under, 211-217
    - Child, Youth and Family Services Act*, deemed custody orders under, 207-210
    - Children's Law Reform Act*, 206
      - application to custody and access, 206-207

- domestic violence
  - amendments, 217-219
- common restriction on
  - consideration of past conduct, 214-217
  - Divorce Act*, 205
  - application to custody and access, 206-207
  - generally, 211-213
  - meaning of test, 213-214
- material change in circumstances, 248-249
- parallel parenting, 227-237
- parentage under Part I of *Children's Law Reform Act*, 186-196
- rights of children, generally, 184
- time-sharing, 252-254
- traditional family unit, 184
- who may apply, 210-211, 243-245

#### **CYBER-BULLYING**

- Bill 27 (N.S.), 465-466
- Cyber Safety Act* (N.S.), 465
- generally, 464-465, 478-486
- Safe Schools Act*, 464

#### **DISCIPLINE OF CHILDREN**

- assaults on children, generally, 379-384
- Bill S-206, proposed repeal of s. 43, 385
- Charter* challenge to s. 43 of *Criminal Code*
  - Canadian Foundation*, 350-357, 367-368
  - permissible "correction" after challenge, 357-365
- Criminal Code* provisions
  - s. 43, use of force justified with children
    - generally, 332-336
    - history, 336-340

- proposed repeal, Bill S-206, 385
- teenagers, 369-379
- s. 265(1)(a), assault, 331
- s. 279(2), unlawful forcible confinement, child abuse, and, 383-384

evidence

- "by way of correction", 345-346
- circumstantial evidence 341-343
- deemed consent, 347-349
- expert evidence, 343-344
- intentional force, 344-345
- necessity, 349-350
- standard of proof, 340

minimal physical contact, 365-367

teachers, "directive" force used by, 367-368

teenagers, 369-379

types of physical child abuse

- application of force where no appreciation of possible injuries, 379
- application of force with expectation of causing injury, 379
- diminished responsibility of accused with mental disorder, 380

#### **DISCLOSURE OF**

##### **INFORMATION**

- assessment reports, 565-573
- generally, 549-550, 580-581
- medical and health information
  - Personal Health Information Protection Act*, 2004, 550
- O'Connor* application (criminal), 553-559

process codified in *Criminal Code*, 554-559  
 process to obtain production of private records, 553-554  
 sexual-based offences, 554, 555, 556-557  
 Society records, 559-565  
 subpoena or summons to attend trial, 550-553

#### DOMESTIC VIOLENCE

amendments to *Children's Law Reform Act*, 217-219  
 Bill C-78, measure to address family violence, 444, 538  
 removing the risk, 22-23  
 testimony of child, 92  
 witnessing, 18

#### EVIDENCE

Bill C-2, protection of children and other vulnerable persons  
 generally, 111  
 special procedure and powers (Part XV), 111-113  
 children not testifying, out-of-court statement  
 caution, need for, 104-105  
 was statement made? 103-104  
 children testifying  
 ability to communicate, 83-84  
 assessing competence to take oath or affirmation, 82-82  
 court of assessment of evidence, 94-99  
 credibility, 119-120  
 criminal cases, 76-78  
 cross-examination, 117-119  
 demonstrative evidence (anatomical dolls), 109  
 family cases, 75-76

general approach to children's evidence, 78-79  
 hearsay, 99-103, 120  
 inquiry, 80-82  
 preventing questioning by self-represented accused, 90-94  
 promise to tell truth, unsworn testimony, 84-87  
 reliability, 129-130  
 screens, 109-111  
 videotaped evidence  
 generally, 105-107  
 order prohibiting use, 108  
 victim or witness with disability, 108-109  
 wishes of child, hearsay, 120  
 family law, in, 74-75, 120-122  
 generally, 130-131  
 judicial notice, 122-127  
 role of trial judge, 88-90  
 rules of evidence, 71-74, 79-80  
 victim impact statements  
 children, and, 128-129  
 generally, 127-128  
*Victim's Bill of Rights Act*, 128  
*voir dire*, 114-117

#### FAMILY

breakdown of marriage, 185, 196-197  
 changing definition of, 185-186  
 traditional family unit, 184

#### FETUS, *see* UNBORN CHILDREN

#### FORCE, USE OF, *see* DISCIPLINE OF CHILDREN

**GENDER IDENTITY, see  
BULLYING; SEXUAL  
ORIENTATION****GIFTED CHILDREN**

bullying, and, 488  
definition, 416

**HUMAN RIGHTS AND SCHOOLS**

"Accessible Education for Students  
with Disabilities", policy of  
Human Rights Commission

ableism, 404  
accommodation process, 404  
disability disclosure, 405  
harassment and poisoned  
environment, 404  
universal design for learning,  
404-405

*Charter of Rights and Freedoms*, 395-  
405

generally, 392-393

*Human Rights Code*

generally, 393  
preamble, 394

separate schools, rights of, 403

*R. v. Jarvis*, children's rights in  
school environment, 399-402

United Nations' *Universal*

*Declaration of Human Rights*, 393

U.S. First Amendment rights,  
*Garcetti v. Ceballos*, 402-403

**INDIAN CHILDREN, see  
INDIGENOUS CHILDREN****INDIGENOUS CHILDREN**

adoption, 56  
alternative dispute resolution, 264  
*Charter of Rights and Freedoms*, s. 35,  
495

*Child and Family Services Act*,  
adoption and, 56

*Child, Youth and Family Services Act*  
adoption and, 56-58

child in need of protection, 47  
supports and services, 8

Customary Care Agreement, and,  
6-7

discipline of children, 385

education, 492-495

Jordan's Principle, and, 495

**JORDAN'S PRINCIPLE, 495****LEGAL REPRESENTATION OF  
CHILDREN, see  
CHILDREN'S LAWYER****LGBTQ CHILDREN, see  
BULLYING; SEXUAL  
ORIENTATION****NATIVE CHILDREN, see  
INDIGENOUS CHILDREN****PARENTING**

Bill C-78, term "parenting time"  
terminology introduced, 198,  
242, 444

*Children's Law Reform Act*,  
parentage under Part I, 186-196

parallel parenting, 227-237

parenting coordinators, 226, 227,  
253-254

parenting plan, 444

parents' power in child's education,  
limitations of, 418-425

shared, 534-537

transcript of child's evidence in  
criminal trial proceedings as  
evidence of, 121-122



- R. v. GLADUE*, contextual analysis in sentencing of Indigenous offenders, 495
- R. v. JARVIS*, children's rights in school environment, 163-164, 399-402
- SCHOOL BOARDS**  
 administration, 426  
 cannabis, legalization of  
   amendments to *Education Act* and Policy/Program memoranda  
     generally, 490-491  
     possession of paraphernalia, 491-492  
     possession of recreational marijuana, 491  
     trafficking, 492  
     under the influence, 491  
     medical marijuana, 492  
 defined, 413-414  
 duties  
   bullying  
     cyber-bullying, 464-466, 478-486  
     different student groups, and, 487-488  
     effects, 489  
     gender, and, 486-487  
     generally, 463  
     race, ethnicity and immigration, 489  
   child protection  
     duty of care, 431-439  
     generally, 427-431  
   duty of care  
     actual injury, 451-453  
     beyond the classroom 454-457  
     contributory negligence, 453  
     duty to protect, 447  
     failure to exercise reasonable standard of care, 448  
     generally, 446-447  
     proximate cause, 448-450  
     generally, 411-413, 414, 446  
   responsibility for student abuse  
     generally, 457-458  
     vicarious liability, 458-460  
     specific statutory, 427-431  
     student records, 439-444  
 health and safety, risk management, 460-462  
 "school board exception" under *Youth Criminal Justice Act*, 444-446  
 suspension and expulsion  
   discretionary suspensions, 467-470  
   expulsion  
     after mandatory suspension, 470-471  
     appeals, 475-476  
     by board, 472-475  
     investigation and no expulsion, 471-472  
     required policies, 476-477  
     where readmission required, 477  
   generally, 466-467  
   mandatory suspensions, 470

- recommending
  - expulsion after, 470-471
- required investigation of, 470

**SCHOOLS**

- attendance
  - enforcement, 408-409
  - mandatory, 405-406
  - right to attend, 407-408
- home-schooling
  - generally, 409-410
  - U.S. First amendment right to free exercise of religion, Amish community, and, 410-411
- human rights, and
  - Charter of Rights and Freedoms*, 395-405
  - generally, 392-393
  - Human Rights Code*
    - generally, 393
    - preamble, 394
  - separate schools, rights of, 403
- Ontario Human Rights Commission policy, "Accessible Education for Students with Disabilities", 404-405
- United Nations' *Universal Declaration of Human Rights*, 393
- U.S. First Amendment rights, *Garcetti v. Ceballos*, 402-403
- Indigenous children, 492-495
- laws governing, 391-392
- parents' power, limitations of, 418-425
- police, and, 477-478

- privacy rights of students in, 161-164, 394, 397-402
- proposed legislation in Ontario, 390
- rights of children and parents, 496
- role in society, 391
- school boards, *see* **SCHOOL**

**BOARDS**

- special education
  - categories and definitions of exceptionalities, 415-418
  - generally, 414
- teachers
  - Bill 48, *Safe and Supportive Classrooms Act*, 431
  - "directive" force used by, 367-368
  - duty of care beyond the classroom, 454-457
  - duty of care to practise with competence, 387-390
  - professional misconduct, 430
  - sexual offences by, 163-164, 168, 169-171, 430-431, 454, 459

**SELF-REPRESENTED****LITIGANTS, JUDICIAL GUIDELINES, 573-574****SENTENCING OF YOUTH, *see* YOUTH CRIMINAL JUSTICE ACT****SEXUAL ORIENTATION, *see also* BULLYING**

- best interests of child, s. 74(3) of *Child, Youth and Family Services Act*, 33
- bullying, and, 484, 488
- obligations of Children's Aid Society, s. 1(2) of *Child, Youth and Family Services Act*, 38

- school
- expulsion, factor considered
    - by Board, 471, 474
  - suspension, factor considered
    - in mitigation of seriousness of activity, 468
- SPECIAL EDUCATION, *see* SCHOOLS**
- TEACHERS, *see* SCHOOLS**
- TRANSGENDER CHILDREN, *see* BULLYING; SEXUAL ORIENTATION**
- UNBORN CHILDREN**
- Charter* rights of, 172-176
  - Children's Aid Society having no jurisdiction over, 35
- VOLUNTARY INTERVENTION**
- generally, 37-39
  - temporary care agreement, 39-40
  - voluntary youth services agreement (VYSA), 40-41
- YOUNG OFFENDERS ACT, *see also* YOUTH CRIMINAL JUSTICE ACT***
- history, 265
  - school board exception, 445
  - Youth Criminal Justice Act*,
    - differences between, 268-271
- YOUTH CRIMINAL JUSTICE ACT***
- application of Act, 267
  - conferences, 278-279
  - court appearances
    - bail *de novo*, 292
    - child welfare agencies, 295
    - first appearance, 290-291
  - medical or psychological evaluation
    - assessment by qualified person, 283
    - assessment report, 294
    - custody for purposes of assessment, 293
    - generally, 292-293
  - pleading guilty, 291-292
  - trial
    - mode of, 295-296
    - proceeding to, 295
    - rules, 296
  - Criminal Code*, application, 267-268
  - disclosure of information in youth record, 444-446
  - extrajudicial measures
    - aim of, 274
    - defined, 273
    - programs, success with, 276-277
  - role in youth criminal justice, 277
  - sanctions
    - admissions for purposes of, 276
    - criminal charges and, 276
    - defined, 275
    - use of, 275-276
    - when used, 273-274
    - who considers, 274-275
  - guiding principles, 271-272
  - history, 265-267
  - information and privacy, 326-330
  - judicial measures
    - generally, 282
    - privacy protections, 287-288
    - right to counsel, 282-283
    - specific procedural protections, 283-287
  - organization of Act, 272-273

- pre-trial detention, 288-290
- "school board exception", release of information in youth record, 444-446
- sentencing
  - adult sentencing, 314-316
  - alternatives to custody, 304-305, 310, 311-314
  - custodial sentences, 308-310, 311
  - factors considered, 316-317
  - generally, 296-297
  - Intensive Rehabilitative Custody and Supervision (IRCS), 323-325
  - other recommendations, 307-308
  - outside help, 305-306
  - pre-sentence report, 306-307
  - purposes and principles, 298-301, 317-323
  - records and documents for, 310
  - secure or open designation, 325
  - violent offence
    - defined, 302
    - exceptional cases, 303-304
    - failure to comply with non-custodial sentence, 302-303
    - pattern of prior findings of guilt, 303
- Young Offenders Act*, differences between, 268-271
- Youth Court
  - court clerk, role of, 282
  - different from adult court, 279
  - enactments to youth court proceedings, 280-281
  - jurisdiction and powers, 279-280
  - justice of the peace, 281
  - where youth's age unknown at time of offence, 280
- Youth Justice Committees, 277-278