

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