Index

ADOPTION	hearing 246
adoption disclosure register 275	assessments 252
searches 276	court process 247
change of name 276	custody pending 246
commencing an adoption 268	dispositions 249
consent of child 271	parties 245
dispensing with 271	types of orders 250
home study report of director 272	types of conferences 248, 249
introduction 267	status review proceedings 251
native adoption orders 273	child in need of protection, definition
residence of adoptee 268	240
who may apply 270	children's aid societies, functions of
orders 273, 274	240
searches 276	conclusion 260
termination of access orders 273	functions of children's aid, 240
ALTERNATIVE DISPUTE	introduction 233
RESOLUTION	legal representation for the child: role
conclusion 95	of Office of the Children's Lawyer,
courts 87	254
	rights of children 256
lawyers 88	children in care 256
confidentiality and privilege 88 reach 88	temporary care agreements 244
family law disputes 90	CONSENT AND CAPACITY
arbitration 93	capacity 353
collaborative law 92	assessments 353
mediation 90	capacity/capable, concept of 353
mediator 90	personal context, importance of to
introduction 85	assessment 353
litigation process 67	consent 349
social workers as mediators or arbi-	components of valid consent 349
trators 94	court ordered assessments 351
	disclosure of client information 351
CHILD PROTECTION	Health Care Consent Act, scope and
appeals 253	application 350
Aboriginal child welfare 259	when not required 350
best interest definitions 235, 236	introduction 349
child abuse, reporting suspicions 257	substitute decision-makers 355
Ontario child abuse register 258	definition 355
child apprehension, by whom and	guardians of property and of the
when 242	person 358
child protection proceedings 244, 245	person 550

obligations 355	mental health and criminal justice
powers of attorney 356	system 335
review of finding of incapacity 355	offences 305
statutory guardian of property 358	attempted offences 288
Substitute Decisions Act 356	drug related offences 310
temporary guardianship 358	against public order 305
COURTS	against the person and reputa-
court system 59	tion 307
proper court, field guide to 60	recklessness and negligence 288
boards, commissions and tribunals	omissions 288
64	sexual offences, public morals and
Federal Court 64	disorderly conduct306
inferior courts 62	parties to an offence 288
provincial superior courts 61	presumptions 290
Statutory Powers Procedures Act 65	procedure 311
Supreme Court of Canada 63	bail (judicial interim release) 312
•	jurisdiction 311
CRIMINAL LAW	plea 312
Canadian Charter of Rights and Free-	proof 289
doms, guarantees 297 crime, definition 281	burden of 289
differential enforcement 283	sentencing 313
expectations of criminal justice sys-	Aboriginal accused 314 consequences of conviction or ac-
tem 284	•
not only a crime, other social con-	quittal 321 objectives
trols 282	options 315
Criminal Code 305	conditional 317
elements of offence 287	conditional releases 319
intention 286, 287	custodial 319
types of offences 286	discharges, absolute and condi-
defences 291	tional 315
challenging mens rea 291	fines 315
intoxication 292	probation, suspended sentence
mental disorder 292	317
mistake of fact 291	statutory releases 320
duress 296	record suspension (pardons) 320
justification and excuse 295	
provocation 295	DOMESTIC VIOLENCE IN
self-defence 295	FAMILY LAW
necessity 296	effects of parenting on children 218
statutory defences 297	conclusion 223
introduction 281	impact on children 217
jurisdiction 285	parenting plans 219
legal representation 322	social and legal responses 215 supervised access 222

ENFORCEMENT OF FAMILY COURT ORDERS Canadian Network of Judges, 207 how judges respond to abduction 206 introduction 205 removal of child to another country 206	FAMILY COURT ORDERS, ENFORCEMENT OF child support 169 Extradition Act 186 introduction 186 removal of child to another country 186 EAMILY LAW STRUCTURE OF
try206 EVIDENTIARY ISSUES, THE SOCIAL WORKER AND THE COURT children, special rules governing testimony 135 civil context 136 criminal context 135 preparation 136 evidence, nature of 117 admissibility 119 hearsay 121 exceptions 121 opinion evidence, lay and expert 122	FAMILY LAW, STRUCTURE OF THE COURT SYSTEM divided jurisdiction 152 Family Court branch of Superior Court of Justice 152 Family Law Rules 152 interim matters 153 introduction 151 social arm of the Family Court 153 family court support workers 154 information services 153 legal support 154 mediation 154 supervised access and exchange centres 154
exceptions 122 disqualification 126 expert testimony, guidelines 124 expert witness, preparation 124 expert witness, who may qualify 124 privileged communications, types of	FAMILY PROPERTY common law relationships and property matters 178 division of property 173 domestic contracts 179 Family Law Act, Ontario 176 matrimonial home, possession of 178
introduction 117 reports to the court 134 testifying in a court or proceeding 130 cross-examination 131 examination-in-chief 1131guidelines 131 preparing clients 133	FINANCIAL SAFETY NETS accessing information and representa- tion 403 fraud/abuse 386 historical background 377 increasing income disparity 378 revocation of Canada Assistance Plan Act 377
FAMILIES, SOCIAL AND LEGAL DYNAMICS OF domestic violence 144 family, definition 143 historically 143	negative stereotyping 385 Ontario's Social Assistance Regime 380 benefit levels 381 eligibility 380

modern 144

obligation to pursue support 384

discretion 384	whose rights are protected 31
spouses 382	constitutional order and jurisdictional
workfare 382	powers 26
social assistance and immigration 402	introduction 17
HUMAN RIGHTS	law, definition 17
accessibility, ensuring 55	rule of law 18
• •	sources of law 19
Canadian Charter of Rights and Free-	common law 19
doms, relationship to 50 discrimination 52	meaning of precedent 21
concept 52	procedural law 24
relationship to s15 of the <i>Charter</i> 54	adversary system 26
grounds 48	natural justice 24
procedures 50	statutory law 22
legislation, evolution of 47	subordinate legislation 23
legislation, status of 51	how a bill is passed 24
	LAWS INTERFACE WITH SOCIAL
IMMIGRATION	WORK
admission to Canada 393	collaboration between lawyers and
economic class 393	social workers 11
family class 393	impact upon social work practice 3
humanitarian and compassionate	introduction 3
grounds 398	presence in the lives of clients 4
refugee class 396	synergies and tensions between prac-
inadmissibility 400	tices of law and social work 7
introduction 393	LECAL ACCOUNTABILITY OF
social assistance, intersection with im-	LEGAL ACCOUNTABILITY OF
migration 402	SOCIAL WORKERS
LAW FOR SOCIAL WORKERS, A	civil responsibility and liability 413
PRIMER	battery 415
Aboriginal rights under the Constitu-	breach of fiduciary duty 415
tion 40	duty to protect 416
Canadian Charter of Rights and Free-	negligence/malpractice 413
doms 29	vicarious liability 418
approach 31	Criminal Code, duty and liability under 418
remedies for breach 33	introduction 411
rights 33	professional regulation 411
democratic (sections 3-5) 34	
equality (section 15) 38	LEGAL NEEDS AND LEGAL
fundamental freedoms (section 2)	SERVICES
33	accessing a lawyer 103
legal (sections 7-14) 35	costs 103
mobility (section 6) 35	introduction 101
scope 30	legal information, accessing 109
structure 32	legal needs 101

legal aid 104 legal aid service delivery models 106 self-represented litigants 109	MENTAL HEALTH AND THE LAW community treatment orders 369
LITIGATION PROCESS adversarial litigation 67 party autonomy 67 party prosecution 68 alternative dispute resolution 70 civil and criminal law 70 appeals 75 civil proceedings 70 criminal cases 72 inquisitional adjudication 68 Ontario's human rights regime 68 Personnel, courts 76 agents/paralegals 78	criminal justice system 366 court ordered assessments 367 diversion 367 not criminally responsible (NCR) 368 introduction 363 legislation 365 informal patients 366 involuntary patients 365 voluntary patients 365 models of disability, medical and social 364 personal health information 370 rights advisors 370
immigration consultants79 crown attorneys 78 judges 76 juries 81 justices of the peace 77 lawyers 77 masters 77 parties 77 witnesses 80	PARENTING ARRANGEMENTS POST SEPARATION access interference 193 background 183 custody and access decision-making 187 child legal representation 189 concluding thoughts 195 legislation, custody & access 185
MARRIAGE AND DIVORCE child support guidelines 166	best interest 185 mobility 193
death of a spouse 168	parenting schedules 192
divorce 158	supervised access 194
barriers to, duty of the court 160	types of custodial arrangements 190 views of the child 188
central registry 159	
grounds 159	SELF-REGULATION OF SOCIAL
judgments 159	WORKERS
proceedings under <i>Divorce Act</i> 158 reconciliation, provisions for 161	introduction 423 legislation, social work 424
residency requirements 159	Alberta 424
enforcement measures, 167	Health Professionals Act 424
marriage, defined 157	British Columbia 425
obligations to children and parents,	Social Workers Act 425
165, 168	Manitoba 426
spousal and child support, 161, 162	The Manitoba Institute of Regis-
who is a spouse, 163	tered Social Workers In- corporated Act 426

New Brunswick Association of Social Workers Act 426 Newfoundland and Labrador 428 Social Workers Associates Act 428 Nova Scotia 429 Social Workers Act 429 Ontario 430 Social Work and Social Service Work Act 430 Prince Edward Island 431 Social Work Act 431 Quebec 432 Professional Code 432 Saskatchewan 434 The Social Workers Act 434 SOCIAL ASSISTANCE: FINANCIAL SAFETY NETS fraud/abuse 386 historical background 377 increasing income disparity 378 revocation of Canada Assistance Plan Act 377 negative stereotyping 385 Ontario's Social Assistance Regime 380 benefit levels 381 eligibility 380 obligation to pursue support 384 discretion 384 spouses 382 workfare 382 social assistance and immigration 402	spousal support 164 spouse, definition 163 support, criteria for determining need 164 support orders, powers of the court 164 variation of orders 165 variation of spousal support 165 SUBSTITUTE DECISION MAKERS definition 355 guardians of property and of the person 358 obligations 355 powers of attorney 356 review of finding of incapacity 355 statutory guardian of property 358 Substitute Decisions Act 356 temporary guardianship 358 YOUTH IN CONFLICT WITH THE LAW historical approaches 327 Juvenile Delinquents Act 327 Youth Criminal Justice Act 329 Young Offenders Act 328 policing 338 role of counsel and social workers 339 Youth Criminal Justice Act 330 age 331 alternative measures and alternative sanctions 331 parents, role of 338 pre-trial detention 333 publication of names 337 purpose 330
benefit levels 381 eligibility 380 obligation to pursue support 384 discretion 384 spouses 382 workfare 382	Youth Criminal Justice Act 330 age 331 alternative measures and alternative sanctions 331 parents, role of 338 pre-trial detention 333 publication of names 337
spousal and child support children, obligation to support parents 168 child support, enforcement measures 167 child support guidelines 166 death of a spouse 168 parents' obligation to support children	purpose 330 restorative justice 332 rights 333 sentencing 335