### **Index**

#### access in domestic violence situations

- denial, 226-230
- generally, 223-226
- restricted or supervised, 230-231

#### adversarial system of justice in family law, 5-6

## alternative dispute resolution, (ADR), 6

#### appendices

- Child Interview Protocol, App. 3
- Collateral Semi-structured Interview Protocol, App. 4
- Family Interview, App. 2
- parenting and special needs children case law from NDD database, App. 5
- Standard Parent Semi-structured Interview Protocol, App. 1
  - • individual interviews with parents, 330-338
  - • joint interviews with parents, 329-330

#### assessment considerations, relocation disputes, 91-94

#### assessment frameworks and tools, domestic violence

- Austin, 192
- Bala et al. RRR Model, 196-197
- Bancroft & Silverman, 191-192
- Campbell's Danger Assessment (DA), 191
- Drozd Domestic Violence in Child Custody (DVCC), 193-194
- Drozd, Kuehnle & Walker's Safety First Model, 193
- Ellis, Stuckless & Wright Domestic Violence Evaluation (DOVE), 192-193
- generally, 198-199
- Jaffe et al.
  - • Abuse Observation Checklist (ABOC), 194
  - • PPP Model, 195-197
  - • Specialized Assessment Needs in Domestic Violence Cases, 195
- Johnston, checklist, 197
- Table 5 Assessment of Domestic Violence: Context is Everything, 198
- Table 6 Framework for Assessing Lethality, 198

## Autism Spectrum Disorder (ASD), special needs children

- etiology and prevalence, 253-254
- factors impairing daily functioning of children with ASD, 254
- impact on parent-child relationships, 254-255
- treatment and therapeutic interventions, 255-256

#### best interests of the child

- Bill C-78, and, 136, 280
- custody awarded to parent with history of abuse, 222-223
- evidence provided by mental health professionals, 5, 7, 8, 16, 27-29
- parenting plans and children with special needs, 280-282
- relocation, and, 42, 44-48
- United Nations Convention on the Rights of the Child, 281

#### **Bill C-78**

- best interests of the child, 136, 280
- child's views, 300
- domestic violence, 208-209, 236
- generally, 2, 41-42, 326
- relocation, 73, 123-125

#### cerebral palsy, special needs children

- etiology and prevalence, 260-261
- factors impairing daily functioning of children with cerebral palsy, 261-262
- impact on parent-child relationships, 262-263
- treatment and therapeutic interventions, 263-265

#### children with special needs

- Autism Spectrum Disorder (ASD)
  - • etiology and prevalence, 253-254
  - • factors impairing daily functioning of children with ASD, 254
  - • impact on parent-child relationships, 254-255
  - • treatment and therapeutic interventions, 255-256
- case law from NDD database, App. 5
- cerebral palsy
  - • etiology and prevalence, 260-261
  - • factors impairing daily functioning of children with cerebral palsy, 261-262
  - • impact on parent-child relationships, 262-263
  - • treatment and therapeutic interventions, 263-265
- epilepsy
  - • etiology and prevalence, 256-258
  - • factors impairing daily functioning of children with epilepsy, 258

- • impact on parent-child relationships, 259
- • treatment and therapeutic interventions, 259-260
- generally, 265
- parenting plans for children with special needs
  - • best interests of the child
    - • Canadian law, 280-281
    - • international conventions, 281-282
  - • considerations for court, 288-290
  - • differentiated parenting assessment, factors to consider
    - • child interview checklist, 285-286
    - • children with ASD, 286-287
    - • children with cerebral palsy, 287
    - • children with epilepsy, 287
    - • collateral interview checklist, 286
    - • generally, 282-283, 287-288
    - • parent-child observations, 284-285
    - • parent interview checklist, 283-284
  - • generally, 279-280
  - • special and extraordinary expenses, s. 7
    - • children with ADHD and ADD, 292
    - • children with ASD, 292-293
    - • children with cerebral palsy, 293-294
    - • children with epilepsy, 293
    - • generally, 290-291, 294
- neurodevelopmental disorders (NDD), defined, 250-253
- United Nations Convention on the Rights of Persons with Disabilities, 281

#### children's participation in family disputes

- balancing vulnerability of children and their rights to be heard, 301-302
- different ways to hear children
  - • Child, Youth and Family Services Act, mandatory consideration of children's views, 308-309
  - • generally, 303-304
  - • how children are heard, 304-306
  - • Katelyn's Principle, 308
  - • surveys and court file reviews, 307-309
- Divorce Act
  - • new s. 16(3)(e), 300
  - • silence on taking child's views into account, 300
- generally, 297-298, 317
- historical view, 297
- participation of children, meaning of, 302-303

- United Nations Convention on the Rights of the Child, 299-300
- Views of the Child Reports (VCR)
  - • distinguished from parenting assessment, 310
  - • generally, 309-311, 317
  - • jurisprudence, 313-317
  - • qualitative studies of, 311-312
  - • summary of research, 312-313
  - • when to order, 312
- what children say they need, 299-300

#### children's wishes

- balancing tensions, 301-302
- domestic violence situations
  - • access, 227-228
  - • family court response, 220
  - • parenting plans in, 199-200
- relocation disputes, 96-97, 104-105, 115, 305

**coercive controlling violence (CCV),** 153, 160-161, 162, 195, 202-203, 219

## conflict-instigated violence (CIV), 161-162, 202

#### court-ordered assessor

- admissibility of report, 22
- appointment process, 19
- challenging recommendations, 23-25
- child protection cases, 19
- clinical issues test, 20-22
- consent of parties, 20-22
- critique evidence of assessor
  - • generally, 25-29
  - • government-retained expert, 29-32
  - • party-retained mental health professionals as consultants, 32-33
- high-conflict situations, 21-22
- interviews by, 18
- literature on undertaking assessments, 17-18
- payment for, 19-20
- required knowledge of, 18-19
- review of court documents and previous reports, 18
- unique role of, 17, 19
- usefulness test, 21

## critique evidence of assessor

- generally, 25-29
- government-retained expert, 29-32
- party-retained mental health professionals as consultants, 32-33

#### definitions

- domestic violence
  - • generally, 132-133, 137, 139-140
  - • United Kingdom, 132
  - • World Health Organization, 132
- expert witness, 7
- family violence, Bill C-78, 209
- litigation expert, 15
- neurodevelopmental disorders (NDD), 250-253
- participant expert, 15
- relocation, Bill C-78, 124
- risk in domestic violence situations, 187

#### divorce, children's adjustment to

- changes to parent-child relationship, 53-54
- father absence and involvement, 54-60
- gatekeeping and support of child's relationship with other parent, 60-61
- parental conflict, 52-53

#### domestic violence

- allegations
  - • false, exaggerated and manipulative allegations, 184, 215-219
  - • rates of substantiated and unsubstantiated allegations, 146-148
- Arbitration Act, 1991, domestic violence training, 235-236
- assessment frameworks and tools
  - • Austin, 192
  - •• Bala et al. RRR Model, 196-197
  - • Bancroft & Silverman, 191-192
  - • Campbell's Danger Assessment (DA), 191
  - • Drozd Domestic Violence in Child Custody (DVCC), 193-194
  - • Drozd, Kuehnle & Walker's Safety First Model, 193
  - • Ellis, Stuckless & Wright Domestic Violence Evaluation (DOVE), 192-193
  - • generally, 198-199, 235
  - • Jaffe et al.
    - • Abuse Observation Checklist (ABOC), 194
    - • PPP Model, 195-197
    - • Specialized Assessment Needs in Domestic Violence Cases, 195

- • Johnston, checklist, 197
- • Table 5 Assessment of Domestic Violence: Context is Everything, 198
- • Table 6 Framework for Assessing Lethality, 198
- change in societal view, 131
- children
  - • effect on, 151-155
  - • rates of exposure, 148-149
- credibility, assessment of, 189-191
- defined
  - • generally, 132-133, 137, 139-140
  - • United Kingdom, 132
  - • World Health Organization, 132
- domestic violence vs. high-conflict situations, 140-142
- false allegations, 184, 215-219
- family court response
  - • access
    - • denial, 226-230
    - • generally, 223-226
    - • restricted or supervised, 230-231
  - • children's wishes, 220
  - • custody awarded to parent with history of abuse, 222-223
  - • exchange supervision, 231-232
  - • false, exaggerated and manipulative allegations, 215-219
  - • historical development
    - • case law, 206-208
    - • legislation, 208-210
  - • interim orders, 210-215
  - • joint custody/parallel parenting, 220-222
  - • judicial control over abusive partners, 232-234
  - • separation-instigated violence, 219
- gender symmetry/asymmetry, 137-138
- generally, 131-135, 163, 183-185, 234-236
- need for specialized knowledge in assessment, 134
- parenting, effect on, 155-158
- parenting plans
  - children's wishes, 199-200
  - • differentiated parenting recommendations and interventions, 200
  - • principles, priorities and considerations
    - • 5 guiding principles for parenting plan, 200-201
    - • ongoing monitoring, 204
    - • practicality of proposed plan, 201-202
    - • resources and interventions, 202
    - • restrictions, 203

- • risk-benefit analysis, 201
- • specialized criminal courts, 205-206
- • stage of separation and legal process to be considered, 202-203
- prevalence
  - • custody litigation populations, 144-146
  - • population studies, 142-144
- "private matter", 131, 135
- rates of children exposed to, 148-149
- rates of substantiated and unsubstantiated allegations, 146-148
- recognizing domestic violence
  - • current perspective, 137-140
  - • historical perspective, 135-137
- relocation disputes, 73-75, 115-117
- screening
  - • distinguished from risk assessment, 185-187
  - • Ontario Domestic Assault Risk Assessment Guide (ODARA), 189
  - • psychometric tools and risk assessment frameworks, 187-189
  - • required even where no allegations made, 135, 235
  - • Spousal Assault Risk Assessment Guide (SARA), 188-189
  - • Trauma Symptom Inventory (TSI), 188
- separation-instigated violence, 162, 219
- types of domestic violence
  - • benefits and risks of typologies, 159-160
  - • coercive controlling violence (CCV), 160-161
  - • conflict-instigated violence (CIV) or situational couple violence, 161-162
  - • generally, 158
  - • mental illness, 162-163
  - • separation-instigated violence (SIV), 162
  - • violent resistance (VR), 161
- underlying causes and explanations, 149-151

#### epilepsy, special needs children

- etiology and prevalence, 256-258
- factors impairing daily functioning of children with epilepsy, 258
- impact on parent-child relationships, 259
- treatment and therapeutic interventions, 259-260

#### evolution of law governing parental assessments, 1-4

#### expert evidence

- court-ordered assessment
  - • challenging recommendations, 23-25
  - • generally, 17-23

- critique evidence of assessor
  - • generally, 25-29
  - • government-retained expert, 29-32
  - • party-retained mental health professionals as consultants, 32-33
- generally, 36
- judges as gatekeepers, 7-11
- qualification as expert witness
  - • impartiality, 12-14
  - • participant and litigation experts, 15-17
  - • *voir dire*, 11-12
- testifying as expert witness, 33-35

## family court response to domestic violence

- access
  - • denial, 226-230
  - • generally, 223-226
  - • restricted or supervised, 230-231
- children's wishes, 220
- custody awarded to parent with history of abuse, 222-223
- exchange supervision, 231-232
- false, exaggerated and manipulative allegations, 215-219
- historical development
  - • case law, 206-208
  - • legislation, 208-210
- interim orders, 210-215
- joint custody/parallel parenting, 220-222
- judicial control over abusive partners, 232-234
- separation-instigated violence, 219

#### Federal Child Support Guidelines, s. 7, special needs children, and

- children with ADHD and ADD, 292
- children with ASD, 292-293
- children with cerebral palsy, 293-294
- children with epilepsy, 293
- generally, 290-291, 294

#### gender symmetry/asymmetry, domestic violence, and, 137-138

#### high-conflict situations

- assessment and opinion of court, 21
- children's adjustment to divorce, and, 52, 57
- distinguished from domestic violence, 140-142
- relocation in, 73-75

## Integrated Domestic Violence Court (IDVC), 205-206

#### interview protocols

- Child Interview Protocol, App. 3
- Collateral Semi-Structured Interview Protocol, App. 4
- Family Interview, App. 2
- Standard Parent Semi-Structured Interview Protocol, App. 1
  - • individual interviews with parents, 330-338
  - • joint interviews with parents, 329-330

#### judges as gatekeepers

- best interest of the child, opinion on, 8
- cost-benefit analysis, 10-11
- dangers of, 8
- judicial scrutiny where expert gives opinion on "ultimate issue", 7
- resources of litigants, 8
- threshold criteria for admission, 9-10

## litigation expert, defined, 15

## mental health professionals, role of

- consultant, as, 32-33
- court-ordered assessments, 17-18
- critique evidence of court-appointed assessor, offering, 25-22
- expert witness, as, 33-35
- generally, 5-7, 23

#### mental illness, domestic violence and, 162-163

#### neurodevelopmental disorders (NDD)

- case law from NDD database, App. 5
- defined, 250-253

#### Ontario Domestic Assault Risk Assessment Guide (ODARA), 189

## parental separation, impact on children

- factors mediating adjustment to divorce
  - • changes to parent-child relationship, 53-54
  - • father absence and involvement, 54-60
  - • gatekeeping and support of child's relationship with other parent, 60-61
  - • parental conflict, 52-53
- generally, 49-51

## parenting plans for children with special needs

- best interests of the child
  - • Canadian law, 280-281
  - • international conventions, 281-282
- considerations for court, 288-290
- differentiated parenting assessment, factors to consider
  - • child interview checklist, 285-286
  - • children with ASD, 286-287
  - • children with cerebral palsy, 287
  - • children with epilepsy, 287
  - • collateral interview checklist, 286
  - • generally, 282-283, 287-288
  - • parent-child observations, 284-285
  - • parent interview checklist, 283-284
- generally, 279-280
- special and extraordinary expenses, s. 7
  - children with ADHD and ADD, 292
  - • children with ASD, 292-293
  - • children with cerebral palsy, 293-294
  - • children with epilepsy, 293
  - • generally, 290-291, 294

#### parenting plans in domestic violence cases

- children's wishes, 199-200
- differentiated parenting recommendations and interventions, 200
- principles, priorities and considerations
  - • 5 guiding principles for parenting plan, 200-201
  - • ongoing monitoring, 204
  - • practicality of proposed plan, 201-202
  - • resources and interventions, 202
  - • restrictions, 203
  - • risk-benefit analysis, 201
  - • specialized criminal courts, 205-206
  - • stage of separation and legal process to be considered, 202-203

#### participant expert, defined, 15

## participation of children in family disputes, see children's participation in family disputes

"private matter", domestic violence viewed as, 131, 135

#### relocation disputes

assessment considerations, 91-94

- Bill C-78, 123-125
- conditions imposed by courts, 119-120
- factors requiring consideration
  - • children's wishes and preferences, 96-97
  - • generally, 94-96
  - • maintaining relationship with both parents, 97-98
  - • older children, 104-105
  - • societal and contextual factors, 98-100
  - • younger children, 100-104
- generally, 125
- interim applications, 118-119
- joint custody, 117
- reducing risks in move, parenting plans, 105-108
- restrictions on relocation and procedural issues, 120-123
- trends in jurisprudence
  - • domestic violence and high conflict separations, 115-117
  - • generally, 108-109
  - • moving parent, behaviour of, 111-112
  - • reasons for move, 113-115
  - • relationship of children to new parents, 112-113
  - • relationship of children with parents, 109-111
  - • wishes of child, 115

#### residential moves and relocation, generally

- case law
  - • Canada, 72
  - • international, 72-73
- • summary of outcome studies, 73
- factors mediating adjustment to divorce
- • changes to parent-child relationship, 53-54
  - • father absence and involvement, 54-60
  - • gatekeeping and support of child's relationship with other parent, 60-61
  - • parental conflict, 52-53
- generally, 41-45, 75-76
- legislation
  - • generally, 41-42
  - • history, 45-49
- literature, 61-62
- parental separation, impact on children, 49-51
- studies
  - • family justice professionals, 68-69
  - • generally, 62-63
  - • interviews, 63-68

- • qualitative studies, summary, 69-70, 71-72
- • relocation, on, 70-71
- violent and high-conflict cases, 73-75

separation-instigated violence (SIV), 162, 202, 219

situational couple violence, 153, 161-162

## special and extraordinary expenses, special needs children, and

- children with ADHD and ADD, 292
- children with ASD, 292-293
- children with cerebral palsy, 293-294
- children with epilepsy, 293
- generally, 290-291, 294

special needs children, see children with special needs

Spousal Assault Risk Assessment Guide (SARA), 188-189

testifying as expert witness, 33-35

Trauma Symptom Inventory (TSI), 188

"ultimate issue", 7, 8, 15, 26, 92

United Nations Convention on the Rights of Persons with Disabilities, 281

#### United Nations Convention on the Rights of the Child

- best interests of the child, 281,
- participation in separation and divorce process, 299-300

## Views of the Child Reports (VCR)

- distinguished from parenting assessment, 310
- generally, 309-311, 317
- jurisprudence, 313-317
- qualitative studies of, 311-312
- summary of research, 312-313
- when to order, 312

violent resistance (VR), 161

# White Burgess Langille Inman v. Abbott and Haliburton Co. • cost-benefit analysis, 10, 12, 29

- impartiality of expert witness, 12-13
  judge's gatekeeping role and admissibility of expert evidence, 8, 26