

Table of Contents

<i>Acknowledgments and About the Authors</i>	iii
<i>Preface</i>	v
<i>Table of Cases</i>	xix

Part I Fundamentals

<i>Chapter 1: Law's Interface with Social Work</i>	3
(1) Introduction.....	3
(2) Law's Impact Upon Social Work Practice.....	3
(3) Law's Presence in the Lives of the Clients of Social Workers	4
(4) Synergies and Tensions Between the Practices of Law and Social Work	7
(5) Collaboration	11
<i>Chapter 2: A Primer on Law for Social Workers</i>	17
(1) Introduction.....	17
(2) How Law is Defined	17
(3) The Rule of Law.....	18
(4) Sources of Law	19
(a) Common Law	19
(b) Statutory Law.....	22
(c) Subordinate Legislation.....	23
(5) Procedural Fairness / Procedural Law	24
(a) Natural Justice	24
(b) Adversary System.....	26
(6) Constitutional Order & Jurisdictional Powers.....	26
(7) The <i>Canadian Charter of Rights and Freedoms</i>	29
(a) Scope	30
(b) Whose Rights are Protected	31
(c) Approach.....	31
(d) Structure.....	32
(e) Remedies for <i>Charter</i> Breach.....	33
(f) <i>Charter</i> Rights	33
(8) Aboriginal Rights under the Constitution.....	40
<i>Chapter 3: Human Rights Codes</i>	47
(1) The Evolution of Human Rights Legislation	47
(a) The Grounds.....	48

(b)	The Procedures	50
(2)	Relationship to the <i>Charter</i>	50
(a)	Quasi-constitutional Status	51
(3)	Discrimination	52
(a)	The Concept	52
(b)	Relationship to Section 15 of the <i>Charter</i>	54
(5)	Ensuring Accessibility	55
	Chapter 4: Confronting the Courts	59
(1)	The Court System	59
(2)	A Field Guide to the Proper Court	60
(a)	Superior Courts	61
(b)	Inferior Courts	62
(c)	Supreme Court of Canada	63
(d)	Federal Court	64
(e)	Boards, Commissions and Tribunals	65
(f)	The <i>Statutory Powers Procedures Act</i>	66
	Chapter 5: The Litigation Process	67
(1)	Adversarial Adjudication	67
(a)	Party Autonomy	67
(b)	Party Prosecution	68
(2)	Inquisitorial Adjudication	68
(a)	Ontario's Human Rights Regime	68
(3)	Alternative Dispute Resolution	70
(4)	Civil and Criminal Law	70
(a)	Civil Proceedings	70
(b)	Criminal Cases	72
(c)	Appeals	75
(5)	Dramatis Personae	76
(a)	Judges	76
(b)	Masters	77
(c)	Justices of the Peace	77
(d)	Parties	77
(e)	Lawyers	77
(f)	Crown Attorneys	78
(g)	Agents/Paralegals	78
(h)	Witnesses	80

(i) Juries	81
Chapter 6: Alternative Dispute Resolution	85
(1) Introduction	85
(2) ADR and the Courts	87
(a) ADR and Lawyers	88
(b) ADR's Reach	88
(c) ADR, Confidentiality, & Privilege	88
(3) ADR and Family Law Disputes	90
(a) Mediation	90
(b) Collaborative Law	92
(c) Arbitration	93
(4) Social Workers as Mediators or Arbitrators	94
(5) Conclusion	95
Chapter 7: Access to Justice, Legal Needs and Legal Services	101
(1) Introduction	101
(2) Legal Needs	101
(3) Accessing a Lawyer	103
(a) Costs	103
(b) Legal Aid	104
(4) Beyond Lawyers: Legal Information and Preventative Law	108
(a) Accessing Legal Information	109
(5) Self-Represented Litigants	109
Chapter 8: The Social Worker and the Court: Evidentiary Issues	117
(1) Introduction	117
(2) Nature of Evidence	117
(a) Types of Evidence	119
(3) Admissibility	119
(a) Exclusionary Rules — Hearsay	121
(b) Lay & Expert Opinion Evidence	122
(c) Privileged Communications	126
(4) Testifying in a Court or Proceeding	130
(a) Examination-in-Chief	131
(b) Cross-Examination	131
(c) Guidelines for Giving Testimony	131
(d) Preparing Clients for Court	133
(5) Reports to the Court	134

(6)	Special Rules Governing Testimony of Children.....	135
(a)	The Criminal Context	135
(b)	The Civil Context.....	136
(c)	Preparing Children to Give Evidence.....	136

Part II The Legal Regulation of Families

Chapter 9: The Social and Legal Dynamics of Families		143
(1)	Introduction	143
(a)	Who and What is the Family?.....	143
Chapter 10: Structure of the Court System in Family Law		151
(1)	Introduction	151
(2)	Family Court Branch of the Superior Court of Justice	152
(3)	Divided Jurisdiction	152
(4)	Family Law Rules.....	152
(5)	Interim Matters.....	153
(6)	The Social Arm of the Family Court.....	153
(a)	Information Booths.....	153
(b)	Mediation	154
(c)	Legal Support	154
(d)	Family Support Workers.....	154
(e)	Supervised Access and Exchange Centres	154
Chapter 11: Family Law and Child & Spousal Support — Marriage and Divorce		157
(1)	Marriage Defined.....	157
(2)	Divorce	158
(a)	Three Main Types of Proceedings under the <i>Divorce Act</i>	158
(b)	Divorce Judgments.....	159
(c)	Residency Requirement	159
(d)	Central Divorce Registry	159
(e)	Grounds for Divorce.....	159
(f)	Barriers to Divorce: Duty of the Court	160
(g)	Provision for Reconciliation	161
(3)	Spousal and Child Support	161
(a)	Spousal Support.....	162
(b)	Obligation of Parents to Support Children	165
(c)	Variation of Orders	165

(d) Child Support Guidelines	166
(e) Enforcement Measures For Child Support	167
(f) Obligation of Children to Support Parents	168
(g) Death of a Spouse.....	168
Chapter 12: Family Property	173
(1) Family Property: Division of Property	173
(2) <i>Family Law Act</i> , Ontario	176
(3) Common Law Relationships and Property Matters	178
(4) Possession of the Matrimonial Home	178
(5) Domestic Contracts.....	179
Chapter 13: Parenting Arrangements Post Separation	183
(1) Background: Child Custody and Access	183
(2) Legislation: Custody and Access.....	185
(3) Legislation: Best Interest Test.....	185
(4) Custody and Access Decision-Making	187
(5) Views of the Child, Often Referred to as Children's Voices	188
(6) Child Legal Representation	189
(7) Types of Custodial Arrangements.....	190
(a) Parenting Schedules.....	192
(b) Interference with Access	193
(c) When One Parent Wishes to Move (Mobility Issues).....	193
(d) Supervised Access.....	194
(8) Concluding Thoughts	195
Chapter 14: Enforcement of Family Court Orders.....	205
(1) Introduction	205
(2) Removal of a Child to Another Country.....	206
Chapter 15: Domestic Violence In Family Law	211
(1) Typologies of Domestic Violence and Risk Assessment In the Context of Child Custody Disputes.....	212
(2) Social and Legal Responses.....	215
(3) Impact on Children Who Have Experienced Domestic Violence	217
(4) Effects of Parenting on Children When Domestic Violence is Present	218
(5) Parenting Plans	219
(6) Supervised Access—Risks and Benefits.....	222
(7) Conclusion	223

<i>Chapter 16: Child Protection</i>	233
(1) Introduction	233
(2) The Best Interests of The Child	235
(3) The Functions Of Children's Aid Societies	240
(4) Definition of a Child in Need of Protection.....	240
(5) By Whom and When a Child may be Apprehended	242
(6) Temporary Care Agreements.....	244
(7) Parties to a Child Welfare Proceeding and Notice	245
(8) Hearings and Orders	245
(9) Custody of Child Pending a Hearing	246
(10) The Hearing.....	246
(11) The Court Process.....	247
(a) The Two Part Nature of the Hearing	247
(b) Temporary Care and Custody Hearing.....	247
(c) Court Conferences.....	249
(d) Case Conference.....	249
(e) Settlement Conference	249
(f) Trial Management Conference	249
(g) Dispositions	249
(h) Status Review Proceedings	251
(12) Assessments	252
(13) Appeals.....	253
(14) Legal Representation for the Child: The Role of the Office of the Children's Lawyer	254
(15) Rights of Children.....	256
(a) Rights of Children in Care	256
(16) Reporting Suspicion of Child Abuse.....	257
(a) Ontario Child Abuse Register	258
(b) Aboriginal Child Welfare	259
(17) Conclusion	260
<i>Chapter 17: Adoption</i>	267
(1) Introduction.....	267
(2) Adoptions in Ontario	268
(a) Commencing an Adoption	268
(b) Residence of Adoptee.....	268
(c) Who May Apply	270

(d)	Religion of the Applicant	270
(3)	Valid Adoption Consents	270
(a)	Consent of the Child	271
(b)	Dispensing with a Person's Consent	271
(4)	Home Study Report of the Director	272
(5)	Family Adoption Orders	273
(6)	Native Adoption Orders	273
(7)	Termination of Access Orders	273
(8)	Adoption Orders	274
(a)	Adoptive Parents' Right to Maternity and Parental Leave	274
(b)	Legal Effect of an Adoption Order	274
(9)	Adoption Disclosure Register	275
(a)	Searches	276
(10)	Change of Name	276

Part III Criminal Law

<i>Chapter 18: Structure of a Crime</i>	281
(1) Introduction	281
(2) What is a Crime?	281
(a) Not Only a Crime	282
(b) Differential Enforcement	283
(c) Expectations of the Criminal Justice System	284
(3) Canadian Criminal Law	285
(a) Jurisdiction	285
(b) Types of Criminal Offences	286
(c) Necessary Elements of a Criminal Offence	287
(d) Omissions	288
(e) Attempted Offences	288
(f) Parties to an Offence	288
(4) Burden of Proof	289
(5) Presumptions	290
(6) Defending a Criminal Charge	290
(a) Challenging <i>Mens Rea</i>	291
(b) Justification and Excuse	295
(c) Necessity	296
(d) Duress	296

(e)	Other Statutory Defences	297
(7)	<i>Charter Guarantees</i>	297
	Chapter 19: A Field Guide to the <i>Criminal Code</i> and Related Statutes	305
(1)	<i>The Criminal Code</i>	305
(a)	Offences Against Public Order.....	305
(b)	Sexual Offences, Public Morals, and Disorderly Conduct	306
(c)	Offences Against the Person and Reputation	307
(c)	Drug-Related Offences	310
(2)	Criminal Procedure	311
(a)	Jurisdiction	311
(b)	Judicial Interim Release (Bail).....	312
(c)	The Plea.....	312
(3)	Sentencing.....	313
(a)	Aboriginal Accused	314
(b)	Sentencing Options.....	315
(c)	Record Suspensions (Pardons).....	320
(d)	Consequence of Conviction or Acquittal	321
(4)	Accessing Legal Advice and Representation	322
	Chapter 20: Youth in Conflict with the Law	327
(1)	Historical Approaches	327
(a)	<i>The Juvenile Delinquents Act</i>	327
(b)	<i>The Young Offenders Act</i>	328
(c)	<i>The Youth Criminal Justice Act</i>	329
(2)	<i>Youth Criminal Justice Act</i>	330
(a)	Purpose.....	330
(b)	Age	331
(c)	Alternative Measures and Alternative Sanctions	331
(d)	Restorative Justice.....	332
(e)	Rights	333
(f)	Pre-Trial Detention	333
(g)	Sentencing.....	335
(h)	Publication of Names.....	337
(i)	Role of Parents	338
(3)	Policing.....	338
(4)	The Role of Counsel and Social Workers	339

Part IV Selected Topics in “Social Law”

<i>Chapter 21: Consent, Capacity, and Substitute Decision-Makers</i>	349
(1) Introduction	349
(2) Consent	349
(a) Scope and Application of the <i>Health Care Consent Act</i>	350
(b) When Consent is not Required	350
(c) Consent and the Disclosure of Client Information	351
(3) Capacity	353
(a) The Concept of Capacity	353
(b) Capacity, the <i>HCCA</i> , and the <i>SDA</i>	353
(c) Capacity Assessments	353
(d) Review of Findings of Incapacity	355
(4) Substitute Decision-Makers	355
(a) What is a Substitute Decision-Maker?	355
(b) Obligations of Substitute Decision-Makers	355
(c) <i>Substitute Decisions Act</i>	356
(d) Powers of Attorney	356
(e) Guardians of Property and of the Person	358
(f) Statutory Guardian of Property	358
(g) Temporary Guardianship	358
<i>Chapter 22: Mental Health & the Law</i>	363
(1) Introduction	363
(2) Mental Health Legislation	365
(a) Voluntary Patients	365
(b) Involuntary Patients	365
(c) Informal Patients	366
(3) Criminal Justice System	366
(a) Diversion and Mental Health Courts	367
(b) Court Ordered Assessments	367
(c) Not Criminally Responsible — NCR	368
(4) Community Treatment Orders	369
(5) Rights Advisors	370
(6) Personal Health Information	370
<i>Chapter 23: Financial Safety Nets</i>	377
(1) Historical Background	377
(a) Revocation of <i>CAPA</i>	377

(b)	Increasing Income and Wealth Disparity	378
(2)	Ontario's Social Assistance Regime	380
(a)	Eligibility	380
(b)	Benefit Levels.....	381
(c)	Workfare	382
(d)	Spouses	382
(e)	Obligation to Pursue Support.....	384
(3)	Negative Stereotyping	385
(4)	Fraud/Abuse	386
	Chapter 24: Immigration	393
(1)	Introduction	393
(2)	Admission to Canada	393
(a)	Economic Class.....	393
(b)	Family Class	393
(c)	Refugee Class.....	396
(d)	Humanitarian and Compassionate Grounds.....	398
(3)	Inadmissibility.....	400
(4)	Intersections with Social Assistance	402
(5)	Accessing Information and Representation	403

Part V Legal and Regulatory Issues For Social Workers

	Chapter 25: Legal Accountability of Social Workers	411
(1)	Introduction	411
(2)	Professional Regulation.....	411
(3)	Civil Responsibility and Liability	413
(a)	Negligence/Malpractice	413
(b)	Battery	415
(c)	Breach of Fiduciary Duty.....	415
(d)	Duty to Protect	416
(e)	Vicarious Liability.....	418
(4)	Duty and Liability under the <i>Criminal Code</i>	418
	Chapter 26: Self-Regulation of Social Workers	423
(1)	Introduction	423
(2)	Status of Social Work Legislation in Canada	424
(a)	Alberta.....	424
(b)	British Columbia.....	425

TABLE OF CONTENTS xvii

(c)	Manitoba	426
(d)	New Brunswick	426
(e)	Newfoundland and Labrador	428
(f)	Nova Scotia	429
(g)	Ontario	430
(h)	Prince Edward Island	431
(i)	Quebec	432
(j)	Saskatchewan	434
(3)	Code of Ethics	435
	<i>Index</i>	441

