

CANADIAN CHILDREN'S LAW

CASES, NOTES & MATERIALS

N. Bala
H. Lilles
G. Thomson

Canadian Legal Casebook Series



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Cases, Notes and Materials

by

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Preface

These cases, articles and comments deal with some of the legal problems faced by children in Canadian society. They are designed to familiarize readers with substantive and procedural issues of law, but they also consider the many tactical and ethical problems which arise, particularly as they relate to the representation of children and their parents. Issues are also considered from a broader societal perspective.

Originally, these materials were prepared for our students at the Faculty of Law at Queen's University and Osgoode Hall Law School. We hope they will be useful to students at other law schools, academics, legal practitioners and judges. We are aware that members of many professions and disciplines are concerned about the issues raised in this volume, and we hope that these readers will also find the materials valuable.

Part I of the book deals with child-welfare legislation, statutes enacted by provincial governments to provide State assistance to children whose families are considered incapable of adequately caring for them. A central theme of this casebook is developed early; there is an inevitable tension between the rights and interests of a child, his parents and the State. In many cases there is bitter controversy about how these competing points of view should be balanced; the task facing the courts can be extraordinarily difficult. One chapter is devoted to adoption—the legal establishment of a parental relationship between a child and persons other than his biological parents, and the severing of ties with his natural parents.

Part II concerns youthful offenders—basically, it is a consideration of the problems faced by children who are charged with violating the criminal law. This Part begins by considering the nature and causes of delinquency, and proceeds to deal with the numerous legal issues which arise. The existing federal legislation, the *Juvenile Delinquents Act*, is examined and compared to the *Youth Offenders Act*, Bill C-61.

Though the bulk of these materials are of a legal nature, we have included many pieces written by members of disciplines other than law, including psychology, psychiatry, medicine, sociology, criminology and social work. We believe that it is crucial for a lawyer to have an appreciation of the approaches taken by other professionals to the cases he is handling in court. A lawyer will have frequent contact with members of these professions, and must be aware of their roles and able to communicate effectively with them. Further, no child or family has a problem which can be viewed as strictly legal; to be effective as a lawyer, one must be aware of the broader context of situations.

These materials suffer a flaw which plagues all Canadian legal scholarship; they fail to do justice to the diversity of a nation with twelve distinct territorial jurisdictions, and one overriding federal system. In dealing with topics which are the subject of provincial jurisdiction, we have tended to focus on the situation in Ontario, the largest province with the most extensive amount of primary and secondary material available. Although we have included numerous case reports and references to developments in other jurisdictions, readers from outside of Ontario are cautioned to consult their own legislation; in particular, there is little consideration of Quebec's *Youth Protection Act*. Indeed, all readers are warned that this is not a textbook or a reference work. We have focussed on issues, approaches and concepts. This volume may serve as a useful starting point for research, and extensive notes are intended to be of assistance in this regard, but we would not pretend to have provided an exhaustive treatment of the topics covered. It is assumed that readers will have access to the relevant legislation; we have generally not reproduced existing legislative provisions.

Further, there are a number of important legal problems relating to children which are not considered at all in these materials. In particular, questions relating to custody, access and child support are left to traditional Family Law materials. Many areas of law have special rules relating to children (for example, torts, contracts, property and civil procedure); and these topics are not considered here.

Readers should note that in excerpts from articles, books and cases, we have generally omitted footnotes and endnotes.

Dr. Chris Cooper, of the Kingston Family Clinic, edited Chapter 7 on "Causes of Delinquent Behaviour"; we are most grateful to him. We would like to express our gratitude to those who, as law students, worked as our research assistants, participating in the revision of these materials over the years and their preparation in their final form. They are Tom Barber, Jennifer MacKinnon, Carolyn Dawe, Mike Nicholas, Malcolm McLeod, Mark Burke and Mary Campbell; several of them are now lawyers practising in the area of Children's Law.

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Nicholas Bala
Heino Lilles
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