

CHAPTER FIVE: CHILDREN AND THE LAW

TABLE OF CONTENTS

CHAPTER FIVE: CHILDREN AND THE LAW	1
I. INTRODUCTION	1
A. GOVERNING LEGISLATION, PROCEDURAL RULES, AND RESOURCES	1
1. <i>Legislation</i>	1
2. <i>Procedural Rules</i>	1
3. <i>Website: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/169_2009_00 Resources</i>	1
II. RELEVANT AGES	2
A. AGE OF MAJORITY	2
B. OTHER RELEVANT AGES	2
1. <i>Criminal Liability</i>	2
2. <i>Attending Restricted and Adult Films (Without Being Accompanied by a Responsible Adult)</i>	2
3. <i>Possession and Consumption of Alcohol</i>	2
4. <i>Ability to Obtain a Driver's License</i>	3
5. <i>Ability to Work</i>	3
6. <i>Sexual Consent</i>	3
7. <i>Marriage</i>	3
8. <i>Ability to Make a Will</i>	4
III. SPECIFIC TOPICS	4
A. PARENTAL RIGHTS AND RESPONSIBILITIES	4
1. <i>Custody and Guardianship</i>	4
a) <i>Custody</i>	4
b) <i>Guardianship</i>	5
2. <i>Access</i>	7
a) <i>Extra-provincial Custody and Access Orders</i>	7
3. <i>Maintenance</i>	8
4. <i>Interjurisdictional Support Orders</i>	9
5. <i>Discipline</i>	9
B. CHILD PROTECTION	10
1. <i>Principles</i>	10
2. <i>Best Interests of the Child</i>	11
3. <i>Duty to Report Need for Protection</i>	11
C. REMOVAL.....	12
1. <i>Removal Procedure</i>	12
2. <i>Presentation Hearing</i>	12
3. <i>Protection Hearing</i>	12
4. <i>Orders</i>	13
5. <i>Access and Consent Orders</i>	14
6. <i>Rights of Children in Care of the Director</i>	14
7. <i>Priority in Placing Children with a Relative</i>	14
D. ADOPTION	15
1. <i>Consent to Adoption</i>	15
2. <i>Disclosure of Identifying Information</i>	15
E. SCHOOL.....	16
1. <i>Compulsory Attendance and Registration</i>	16
2. <i>Discipline</i>	16
3. <i>Rights of Parents and Students</i>	16
4. <i>School Records</i>	16
5. <i>Language of Instruction</i>	16

6.	<i>Other Concerns</i>	17
F.	CHILD LEAVING HOME OR PARENT GIVING UP CUSTODY OF A CHILD	17
1.	<i>Rights of the Child</i>	17
2.	<i>Giving Up Custody of a Child</i>	18
G.	MEDICAL ATTENTION	18
1.	<i>Obligation to Provide Treatment</i>	18
2.	<i>Consent to Treatment</i>	18
H.	WILLS AND ESTATES	19
1.	<i>Ability to Inherit Under a Will</i>	19
2.	<i>Ability to Make a Will</i>	19
I.	CONTRACTS	20
J.	MOTOR VEHICLES	20
1.	<i>Ability to Obtain a License (<u>Motor Vehicle Act</u>)</i>	20
2.	<i>ICBC (<u>Insurance (Vehicle) Act</u>)</i>	21
3.	<i>Parents' Liability</i>	21
K.	EMPLOYMENT AND UNEMPLOYMENT	22
1.	<i>Ability to Work</i>	22
2.	<i>Employment Insurance</i>	22
3.	<i>Workers' Compensation</i>	22
4.	<i>Labour Relations Board</i>	22
5.	<i>Income Assistance for Children and Youth</i>	23
6.	<i>Child Disability Benefit</i>	23
7.	<i>Universal Childcare Benefit</i>	23
L.	CIVIL ACTIONS	24
1.	<i>Infant as Plaintiff</i>	24
2.	<i>Infant as Defendant</i>	24
3.	<i>Infant as Witness</i>	25
4.	<i>Parental Responsibility</i>	25
5.	<i>Statute of Limitations</i>	25

CHAPTER FIVE: CHILDREN AND THE LAW

I. INTRODUCTION

This chapter addresses legal issues relating to children. Note that many parts of this chapter overlap with **Chapter 3: Family Law** and **Chapter 2: Youth Justice**. These three chapters should be used together when advising a client on legal issues regarding children.

A. Governing Legislation, Procedural Rules, and Resources

1. Legislation

Child, Family and Community Service Act, R.S.B.C. 1996, c. 46 [CFCSA].

Website:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96046_01

Family Relations Act, RSBC 1996, c 128

Website:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96128_01

Parental Responsibility Act, S.B.C. 2001, c. 45 [PRA].

Website: www.bclaws.ca/Recon/document/ID/freeside/00_01045_01

Divorce Act, R.S.C. 1985, c. 3

Website: <http://laws.justice.gc.ca/eng/acts/D-3.4/>

Infants Act, R.S.B.C. 1996, c. 223.

Website:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96223_01

Youth Criminal Justice Act, S.C. 2002, c. 1, s. 1 [YCJA].

Website: <http://laws-lois.justice.gc.ca/eng/acts/Y-1.5/index.html>

2. Procedural Rules

British Columbia Provincial Court (Family) Rules

Website:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/417_98_00

British Columbia Supreme Court Family Rules (effective July 1, 2010)

3. Website:

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/169_2009_00 Resources

The Office of the Representative for Children and Youth

Website: www.rcybc.ca

Help Line for Children

Telephone: 310-1234 (no area code required)

Youth Against Violence Line

Toll-Free: 1-800-680-4264

Canadian Children's Rights Council
Website: www.canadiancrc.com

Clicklaw (Links to many other resources)
Website: www.clicklaw.bc.ca/solveproblems/search?f=Children+%26+teens

Legal Services Society ("LSS")/Legal Aid
Toll-Free: 1-866-577-2525 or (604) 408-2172
Website: www.lss.bc.ca

JP Boyd's BC Family Law Resource
Website: www.bcfamilylawresource.com

II. RELEVANT AGES

A. *Age of Majority*

The Age of Majority Act, R.S.B.C. 1996, c. 7, s. 1 provides that the age of majority in B.C. is **19** years. Section 1 also applies to private documents, such as wills. A person's age is determined by the provisions set forth in s. 25(8) of the Interpretation Act, R.S.B.C. 1996, c. 238.

B. *Other Relevant Ages*

1. **Criminal Liability**

A person must be 12 years of age or older to be liable for a criminal offence (Criminal Code, R.S.C. 1985, c. 46, s. 13). A person between the ages of 12 and 17, inclusive, can be criminally liable as a young offender under the Youth Criminal Justice Act [YCJA].

The YCJA came into force on April 1, 2003. The purpose of the Act is, in part, to repeal and replace the Young Offenders Act, R.S.C. 1985, c. Y-1 and to provide principles, procedures, and protections for the prosecution of young persons under criminal and other federal laws. For more information, see **Chapter 2: Youth Justice**.

2. **Attending Restricted and Adult Films (Without Being Accompanied by a Responsible Adult)**

In 1997, the Director of Film Classification revised the classification system for motion pictures. A person under the age of 18 years is classified as a minor (Motion Picture Act, R.S.B.C. 1996, c. 314, s. 1). Minors may not view films classified as "Restricted" or "Adult", and may not view films labelled as "18A" unless accompanied by an adult (Motion Picture Act Regulations, BC Reg 260/86, s 3).

3. **Possession and Consumption of Alcohol**

A person must be at least 19 years of age to lawfully possess or consume alcohol in B.C. (Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267, s.34).

4. **Ability to Obtain a Driver's License**

An individual must be 19 to qualify for a driver's licence. If an individual is between 16 and 18 years of age, a parent or guardian must submit the application for the driver's licence in the form required by the Insurance Corporation of British Columbia verified by affidavit (Motor Vehicle Act, R.S.B.C. 1996, c. 318, s. 32). The Insurance Corporation of British Columbia ("ICBC") will **never** grant a licence to someone under the age of 16. For more information, see **Section III.J: Motor Vehicles**, below.

5. **Ability to Work**

Any person aged 15 years or over may work. A child between the ages of 12 and 14 needs written permission from their parent or guardian prior to working. A child under the age of 12 must have both the written consent of the parent or guardian and the written permission of the Director of Employment Standards prior to working. For more information, see **Section III.K: Employment and Unemployment**, below.

6. **Sexual Consent**

As of 1890, the age of consent for sexual activity was set at 14 years. Recently, the age of consent in Canada has been changed from 14 to **16 years** (Tackling Violent Crime Act, Bill C-2, An Act to amend the Criminal Code and to make consequential amendments to other Acts, 39th Parliament, 2nd Session, October 2007, effective May 1st, 2008). However, if the sexual activity involves exploitative activity, such as prostitution, pornography or where there is a relationship of trust, authority or dependency, the age of consent is 18 years.

Section 150.1(3) of the Criminal Code provides what is often referred to as a "close in age" or "peer group" exception: a 12 or 13 year old can consent to engage in sexual activity with another person who is less than two years older and with whom there is no relationship of trust, authority or dependency. A 14 or 15 year old can consent to engage in sexual activity with a partner who is less than five years older with whom there is no relationship of trust, authority or dependency. An exception is also available for pre-existing marriages and equivalent relationships.

7. **Marriage**

Both parties to the marriage must be at least 19 years old. However, the Marriage Act, R.S.B.C. 1996, c. 282, provides that:

- individuals between the ages of 16 and 19 may marry without the consent of anyone if they are a widower or widow (s. 28(1)), and,
- other persons between the ages of 16 and 19 may marry if they have the consent of:
 - a) both parents or of the parent having sole guardianship, or the surviving parent (s. 28(1)(a));
 - b) a lawfully appointed guardian of that person (s. 28(1)(b));
 - c) the Public Guardian if both parents are dead and there is no lawfully appointed guardian (s. 28(1)(c)); or
 - d) a judge of the Supreme Court (usually only where the parent's consent is unreasonably withheld) (s. 28(2)).

No person under the age of 16 can marry unless the marriage is shown to a Supreme Court judge to be expedient and in the interest of the parties (s. 29). If the parent or guardian “unreasonably or from undue motives refuses or withholds consent to the marriage,” a minor may apply to court for a declaration to allow the marriage (s. 28(2)).

Section 28(6) provides that a marriage of a minor must not be solemnized, and a license must not be issued, unless a birth certificate or other satisfactory proof of age has been produced to the issuer of marriage licenses or to the religious representative.

However, s. 30 provides that failure to comply with ss. 28 or 29 will not invalidate a marriage that has taken place. In other words, if someone manages to get married at 15 and obtains a valid marriage license, the marriage is valid.

8. Ability to Make a Will

Under s. 7 of the Wills Act, R.S.B.C. 1996, c. 489, a will made by a person under the age of 19 is not valid unless he or she (a) is or has been married; (b) is on active service with the Canadian Armed Forces; or (c) is a mariner at sea. For more information, see **Section III.H: Wills and Estates**, below.

III. SPECIFIC TOPICS

A. Parental Rights and Responsibilities

1. Custody and Guardianship

Custody is the day-to-day care and control of a child. Guardianship is the right to be involved in the decision-making process regarding the child’s upbringing. See **Chapter 3: Family Law**.

a) Custody

The Family Relations Act provides that:

- parents have the right to make their own separation agreements that deal with the custody of their children. However, if the parents cannot agree on custody, they can go through the courts. A signed copy of a written agreement, filed in Provincial or Supreme Court, is enforceable as if it were a court order (s. 121(2) or s. 122);
- parents living together have joint custody over their children (s. 34(1)(a));
- where the parents live separate and apart, the parent with whom the child usually resides may have *de facto* custody of the child (s. 34(1)(b)), unless the court orders otherwise;
- in the case of conflicting claims, the person with custody rights under a court order (s. 34(2)(a)), or under an agreement (s. 34(2)(b)), or the parent with whom the child usually resides (s. 34(2)(c)) may have custody of the child, unless the court orders otherwise;
- in the case of conflicting claims, where both parents are entitled to custody under s. 34(2)(c) above, the person who usually has day-to-day personal care of the child may have custody of the child (s. 34(2)(d)), unless the court orders otherwise;

- the primary consideration in determining custody is always the best interests of the child (s. 24), which is assessed based on:
 - a) the health and emotional well-being of the child, including any special needs for care and treatment;
 - b) if appropriate, the views of the child;
 - c) the love, affection, and similar ties that exist between the child and other persons;
 - d) education and training for the child; and
 - e) the capacity of each person to whom guardianship, custody, or access rights and duties may be granted to exercise those rights and duties adequately.
- when a child is 12 years of age or older, their views on custody gain more weight in court. Courts may consider the preferences or views of children who are not yet 12 years of age, but who do possess a greater level of maturity and thoughtfulness. Pre-adolescent children, however, rarely provide direct evidence to the court. Judges are normally reluctant to hear children's testimony; and
- certain individuals are entitled to notice of custody or guardianship proceedings under s. 22.

b) Guardianship

A guardian is both the guardian of the person of the child and the guardian of the child's estate (s. 25). A child who is over 12 years of age must consent in writing to the granting of guardianship (s. 30(2)) unless the court is satisfied that the guardianship order is necessary in the best interests of the child.

Guardianship is governed primarily by Part 2 of the Family Relations Act. The Act provides that the best interests of the child are the paramount consideration (s. 24). The Act also provides that:

- subject to a guardianship agreement (s. 28) or court order (s. 30), parents who are living together, whether married or not, are joint guardians (s. 27(1));
- subject to a guardianship agreement (s. 28) or court order (s. 30), where the parents are or have been married to each other but are now living apart, the parent with care and control of the child is the sole guardian of the child (s. 27(2));
- where the spouses were never married, are now living separately, and were at one time joint guardians of the child, the spouse who usually has care and control of the child is the sole guardian of the child (s. 27(3)), unless the court orders otherwise;
- where a decree of divorce has been issued or a certificate stating that the marriage has been dissolved has or could be issued under the Divorce Act, R.S.C. 1985, c. 3 (2nd supp.), a person granted custody by order in the proceeding is the sole guardian (Family Relations Act, s. 27(4));
- subject to a guardianship agreement, where the parents of a child were never married to each other during the life of the child or 10 months before the child's

birth, were never joint guardians, and are now living separate and apart, the mother is the sole guardian (s. 27(5));

- guardians may be appointed by court order (s. 30). This may be subject to two conditions. First, the consent of a child over 12 years of age is required (s. 30(2)(a)) unless the court is satisfied that the appointment is necessary and is in the best interests of the child (s. 30(2)(b)). Second, for the appointment of a third party as guardian, the consent of both parents is required unless the consent is being unreasonably withheld, or when the parent who could give or withhold consent is not reasonably available (s. 30(3));
- each parent affected by a guardianship or a custody appointment, and each adult person with whom the child usually resides, must be served with notice of any application under Part 2 of the Family Relations Act, unless the court orders otherwise (s. 22);
- parents, who are themselves minors and who are or have been married, may make, conduct, or defend an application under the Family Relations Act without a guardian *ad litem* (also known as a litigation guardian) (s. 4(2)). See also *Smythe v. Bourgeois*, [2008] BCSC 1847 at para. 28: a “minor parent who is a party to a proceeding brought in the Provincial Court of B.C. under the Act does not require a litigation guardian”;
- the Child, Family and Community Service Act [CFCSA] provides that the Director of Child, Family and Community Service becomes the guardian of a child when a continuing custody order is made under the Act (s. 50(1); see **Section III.B: Child Protection and Removal**, below);
- under s. 5(3) of the Family Relations Act, the Supreme Court may act in a *parens patriae* (guardian of persons under a legal disability) capacity with respect to any child before the court, to determine the best interests of that child;
- when a sole guardian dies, the new guardian is appointed as per the instructions in the will of the sole guardian;
- when a joint guardian dies, the surviving joint guardian continues as guardian irrespective of any will (s. 29); and
- parents can appoint a guardian by will or deed under s. 50 of the Infants Act.

Parents may also act as joint guardians. A popular way of defining the rights and obligations both parents have when they share joint guardianship (also known as the “Joyce model” after Mr. Justice Joyce) is as follows:

1. the parents are to be the joint guardians of the estate of the child;
2. in the event of the death of either parent, the remaining parent will be the sole guardian of the person of the child;
3. the parent who has the primary responsibility for the day to day care of the child will have the obligation to advise the other parent of any matters of a significant nature affecting the child;
4. the parent who has primary care will have the obligation to discuss with the other parent any significant decisions which have to be made concerning the child, including significant decisions concerning the health

(except emergency decisions), education, religious instruction, and general welfare of the child;

5. the parent who does not have primary care will have the obligation to discuss the foregoing issues with the parent and each parent shall have the obligation to try to reach agreement on those major decisions;
6. in the event that the parents cannot reach agreement with respect to any major decision despite their best efforts, the primary care parent will have the right to make such decision;
7. the other parent will have the right, under s. 32 of the *Family Relations Act*, to seek a review of any decision which that parent considers contrary to the best interest of the child; and
8. each parent will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers.

2. Access

The Family Relations Act, Part 2, and the Divorce Act, s. 16(4-5) govern access issues. Access decisions can be made in either Supreme Court or Provincial Court, but Provincial Court is subject to some limitations on jurisdiction, outlined in s. 6(1) of the Family Relations Act. For example, the Provincial Court only has jurisdiction to hear matters under the Family Relations Act; it has no jurisdiction to apply the Divorce Act.

NOTE: There are no filing fees nor does a person need legal representation in Provincial Court, making it a more accessible option for many clients.

The court may make an order for access that includes terms and conditions it considers necessary and reasonable in the best interests of the child (Family Relations Act s. 35(4)). A court may order that one or more persons be granted custody or access to a child; this includes grandparents, other relative and non-relatives (s. 35(1)). Section 24 provides that the best interests of the child are a paramount consideration.

It is a criminal offence for any parent to take a child under 14 years from the parent with actual custody without their consent whether or not that parent has a court custody order (Criminal Code, ss. 282 and 283).

Consult **Chapter 3: Family Law** for more information.

a) Extra-provincial Custody and Access Orders

Under the Family Relations Act the court must exercise its jurisdiction only if the child is “habitually resident” in B.C. (s. 44). A child is habitually resident:

- a) in the place where the child resided with both parents (s. 44(2)(a));
- b) if the parents are living separate and apart, with one parent under a separation agreement or with the implied consent of the other parent or under a court order (s. 44(2)(b)); or
- c) with a person other than a parent on a permanent basis for a significant period of time (s. 44(2)(c)), whichever occurred last.

If the child is not habitually resident in B.C., the court must at the commencement of

the application order be satisfied that:

- a) the child is physically present in B.C.;
- b) substantial evidence concerning the best interests of the child is available in B.C.;
- c) no application has been made or order granted in another province;
- d) the child has a real and substantial connection with B.C.; and
- e) the exercise of jurisdiction is appropriate on a balance of convenience (s. 44(1)(b)).

The court may override the conditions of s. 44 if it is satisfied that the child is physically present in B.C. and in danger of serious harm on a balance of probabilities (s. 45).

B.C. courts are required to enforce extra-provincial orders (s. 48) with certain exceptions (s. 48(1)). However, a material change in circumstances (s. 49) or a risk of serious harm (s. 50) may supersede an extra-provincial order.

If one spouse is not in B.C., a party can only proceed in B.C. Supreme Court, because the Provincial Court has no jurisdiction outside of the province.

3. Maintenance

The definition of “child” varies slightly between the Family Relations Act (sections. 1 and. 87) and the Divorce Act (s. 2).

Section 1 of the Family Relations Act defines a “child” as someone who is under the age of 19. However, the definition is expanded under Part 7 of the Act to include someone 19 or over who is unable to withdraw from the parent’s care. There is no provision in the Act for anyone under 19 to be anything but a child.

Under the Divorce Act, the definition of “child” is someone who is under the age of majority (19 years in B.C.) **and** who has not withdrawn from the parent’s charge, or who is at or over the age of majority but unable, by reason of illness, disability or other cause, to withdraw from parental charge or to obtain necessities of life. Therefore, under the Divorce Act, there may not be an obligation to pay child support to a child under 19, if the child has already withdrawn from the parent's charge.

Child maintenance is determined by the Federal Child Support Guidelines which set out the presumptive amount of child support based on the non-custodial parent’s income. (see <http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/legis/fcsg-lfpae/index.html>). If the paying parent lives in B.C., the child maintenance is determined by the B.C. Child Support Tables; the appropriate table is for the province where the paying parent lives, not where the child lives. See **Chapter 3: Family Law**.

The Family Relations Act, Part 7, deals with maintenance of children by their parents and stepparents, whether married or common law, and of parents by their children (ss. 88 – 90). The Divorce Act also provides for maintenance orders as a corollary to divorce under s. 15.1, with the discretion to extend maintenance for a child who is over the age of majority and is unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life (e.g. a university student) (s. 2(1)).

Under the Family Relations Act, both parents, whether married or common law, are responsible for the maintenance of their child. The existence of a maintenance order against

one parent does not relieve the other parent of this obligation to support the child (s. 88(2)). Parents are responsible for the maintenance of their child whether or not they were married at the time of the child's birth.

Unless the contrary is proved, the courts will presume paternity on the part of the putative father if he and the mother were cohabiting in a relationship of some permanence at the time of the birth, or 300 days prior to the birth of the child (s. 95). Where circumstances give rise to a presumption of paternity by more than one male person under this section, no presumption shall be made as to paternity (s. 95(3)). Men can be forced to have a paternity test to determine parentage (s. 95.1).

Section 215 of the Criminal Code places a legal duty on parents to provide their children with the necessities of life until they reach the age of 16, unless the child is able to provide the necessities of life independently.

4. **Interjurisdictional Support Orders**

Parents living in different provinces or countries can apply for or enforce support orders without needing to travel to the other jurisdiction. Under the Interjurisdictional Support Orders Act, S.B.C. 2002, c. 29, many jurisdictions have agreed to recognize family support (maintenance) orders and agreements made elsewhere. British Columbia has reciprocal agreements with all Canadian provinces and territories and with several foreign countries.

For a list of all reciprocating jurisdictions, see the Schedule in the Interjurisdictional Support Orders Regulations, B.C. Reg. 15/2003 at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/10_15_2003.

Appeals of decisions made under this Act must be made within 90 days of the ruling (s. 36(5)) but, despite this, the court to which an appeal is made may extend the appeal period before or after the appeal period has expired (s. 36(6)). The website www.isoforms.bc.ca provides a questionnaire under the heading "forms select" to determine which application forms are required for a client's specific situation. Forms can be accessed online or be mailed to you. A guide to filling out the forms can be found at <https://www.isoforms.bc.ca/shared/pdfs/GuideIntroInstructions.pdf>. Completed forms can be submitted to:

Reciprocals Office

Vancouver Main Office Boxes
P.O. Box 2074
Vancouver, B.C. V6B 3S3

In B.C., Family Justice Counsellors have the ability to track the status of Interjurisdictional Support Order (ISO) applications. If an applicant has questions on the status of their ISO application, they can talk to a Family Justice Counsellor at their local Family Justice Centre. To find the nearest Centre, call Enquiry B.C. at (604) 660-2421 between 8:00 a.m. and 5:00 p.m., Monday to Friday, and ask the operator to transfer you to a Family Justice Centre.

5. **Discipline**

The Criminal Code (s. 43) allows a parent, a person standing in the place of a parent, or a schoolteacher to discipline a child, by way of correction, provided that only reasonable force is used. However, s. 76(3) of the School Act, R.S.B.C. 1996, c. 412 requires that teachers ensure the discipline is similar to that of a kind, firm, and judicious parent, and must not include the use of corporal punishment.

The Supreme Court of Canada examined s. 43 in *Canadian Foundation for Children, Youth and the Law v. Canada*, [2004] SCC 4, 16 C.R. (6th) 203. The Court held that s. 43 does not violate the

constitutional rights of children. The discipline must be “by way of correction” meaning “only sober, reasoned uses of force that address the actual behaviour of the child and are designed to restrain, control or express some symbolic disapproval of his or her behaviour” (para. 24). Furthermore, the Court provided a comprehensive definition of “reasonable force”:

Generally, s. 43 exempts from criminal sanction only minor corrective force of a transitory and trifling nature. On the basis of current expert consensus, it does not apply to corporal punishment of children under two or teenagers. Degrading, inhuman or harmful conduct is not protected. Discipline by the use of objects or blows or slaps to the head is unreasonable. Teachers may reasonably apply force to remove a child from a classroom or secure compliance with instructions, but not merely as corporal punishment. Coupled with the requirement that the conduct be corrective, which rules out conduct stemming from the caregiver's frustration, loss of temper or abusive personality, a consistent picture emerges of the area covered by s. 43. (para. 40).

B. *Child Protection*

1. Principles

The Child, Family and Community Service Act [CFCSA] codifies child protection remedies available in B.C. It also gives specific rights to children in care under the Act (section 70). The Representative for Children and Youth Act, S.B.C. 2006, c. 29 s.6 provides that it is the responsibility of the Representative to:

- support, assist, inform and advise children and their families respecting designated services;
- monitor, review, audit and conduct research on the provision of a designated service by a public body or director for the purpose of making recommendations to improve the effectiveness and responsiveness of that service, and comment publicly on any of these functions
- review, investigate and report on the critical injuries and deaths of children as set out in Part 4

The guiding principles in s. 2 of the CFCSA provide that:

- children are entitled to be protected from abuse, neglect, harm, or threat of harm;
- the family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents;
- if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided;
- the child's views should be considered when decisions relating to that child are made;
- kinship ties to extended family should be maintained;
- the cultural identity of Aboriginal children should be preserved; and
- decisions relating to children should be made and implemented in a timely manner.

B.C. Children and Youth Review: An Independent Review of B.C.'s Child Protection System (April 7, 2006) recommends a number of changes to the sections discussed in this chapter, including the appointment of a Representative for Children and Youth. The full report can be viewed online at www.cecw-cepb.ca/publications/946.

2. Best Interests of the Child

Section 4 of the Child, Family and Community Service Act [CFCSA] defines “best interests of the child” somewhat differently than does the Family Relations Act. Factors that must be considered under the CFCSA include:

- the child’s safety;
- the child’s physical and emotional needs and level of development;
- continuity in child care;
- the quality of relationships with parents;
- the child’s cultural, racial, linguistic and religious heritage;
- the child’s views; and
- the effect on the child of any delays in making a decision.

Section 4(2) mandates that, in assessing the best interests of Aboriginal children, the importance of preserving the child’s cultural identity must be considered.

The CFCSA definition of when a child needs protection includes the following (s. 13):

- situations where there is a risk of physical or sexual abuse, harm, or exploitation;
- emotional harm by a parent’s conduct;
- deprivation of necessary health care;
- situations where the parent is unable or unwilling to care for the child and has not made adequate provision for the child’s care; and
- where the child has been abandoned and adequate provision has not been made for the child’s care.

See s. 13 for a complete enumeration of circumstances where children need protection.

3. Duty to Report Need for Protection

The Child, Family and Community Service Act [CFCSA] (s. 14(1)) requires someone who believes a child is being or is likely to be physically harmed, sexually abused, or exploited to report the matter to the Ministry of Children and Family Development. The Helpline for Children (310-1234) provides 24-hour access to social workers in case of an emergency.

Reports to the Ministry are anonymous. No action lies against a person making a report unless it is made maliciously or without reasonable grounds. Failure to report cases of abuse or exploitation constitutes an offence (s. 14(3)), even when the information was confidential or privileged, **except** for when the information was obtained through a solicitor-client relationship (s. 14(2)). The Director under the CFCSA must assess the information reported (s. 16). Case law has demonstrated that the duty of the director to act is actually broader than the legislated duty: see *B.S. v. British Columbia (Director of Children, Family, and Community Services)*, [1998] 8 W.W.R.1 (B.C.C.A.).

C. *Removal*

Under the Child, Family and Community Service Act [CFCSA], the Ministry for Children and Families has different options to deal with an unattended child (s. 25), or a lost or runaway child (s. 26). Pursuant to these sections, the Ministry can take the child for up to 72 hours without formally removing the child from his or her parents. Furthermore, the Ministry can take a child away to provide essential health care without legally removing the child, provided that the Ministry first obtains a court order under s. 29 of the CFCSA. In situations where there are reasonable grounds to believe that the child's health or safety are in immediate danger, a police officer may take charge of the child (s. 27).

1. **Removal Procedure**

Under the CFCSA, Directors are appointed to enforce the Act. A Director may, without a court order, remove a child if there are reasonable grounds to believe that the child needs protection and that the child's health or safety is in immediate danger, or no other less disruptive measure that is available is adequate to protect the child (s. 30). When removing a child, a Director must make all reasonable efforts to notify each parent of the child's removal (s. 31). Practically speaking, the Director delegates his or her duty to social workers who then carry out the removal procedure.

2. **Presentation Hearing**

The Director must attend the court within seven days of the removal for a presentation hearing (CFCSA, s. 34) and present to the court a written report that includes:

- the circumstances of the removal;
- information about less disruptive measures considered before removal; and
- an interim plan of care for the child, including, in the case of an Aboriginal child, the steps to be taken to preserve the child's aboriginal identity (s. 35).

A child who is removed under the CFCSA is put under the care of the Director until the court makes an interim order about the child, the child is returned, or until the court makes a custody or supervision order (s. 32). A presentation hearing is a summary hearing and must be concluded as soon as possible (normally within 30 days) (s. 33.3).

If the parents consent to the interim removal, an order will be made that the child remain in the custody of the Director pending a protection hearing (see below). If the parent(s) disagree with the removal, a presentation hearing will be scheduled as soon as possible (s. 33.3) to determine where the child should live pending the full protection hearing. The presentation hearing may proceed by way of affidavits or *nova voce* evidence. At the conclusion of the presentation hearing, the child may stay in the custody of the Director, may be returned to his or her parent(s) or may be returned to his or her parent(s) under supervision (s. 35(2)). It is important to note that the notice of the presentation hearing need not be formally served, and informal notice is adequate.

3. **Protection Hearing**

A protection hearing must start within 45 days after the conclusion of the presentation hearing (CFCSA, s. 37(2)). The purpose of the protection hearing is to determine whether the child needs protection (s. 40(1)). The Director must return the child to the parent(s) as soon as possible if it is determined that the child does not need protection (s. 40(2)). A child can be returned and still be under minimum supervision of the Director, or returned without supervision. If the child is returned without supervision, the proceedings are at an end (s.37(1)).

4. Orders

Section 41 of the CFCSA outlines orders that can be made at a protection hearing:

- an order to return the child to the custody of the parents while being under the Director's supervision for a period of up to six months;
- an order that the child be placed in the custody of a person other than the parent (e.g. a relative) with the consent of that other person and under the Director's supervision for a specified period of time;
- an order that the child remain or be placed in the custody of the Director for a specified period of time; or
- an order that the child be placed in the continuing (permanent) custody of the Director. Continuing (permanent) orders should be made under s. 49.

The parents may consent to or oppose the order. If the parents oppose the order, a Rule 2 case conference is scheduled as soon as possible and a judge will attempt to resolve any issues in dispute (see Provincial Court (Child, Family and Community Service Act) Rules, B.C. Reg. 533/95 for a complete description). If the matter is not settled at the case conference, a date is scheduled to determine whether the child needs protection.

The content of supervision orders is outlined in the CFCSA, s. 41.1. Terms and conditions that may be attached to a supervision order include:

- services for the child's parent(s);
- day-care or respite care;
- the Director's right to visit the child; and
- the Director's duty to remove the child if the person with custody does not comply with the order.

Section 43 outlines the time limits for temporary custody orders and s. 47 outlines the rights and responsibilities of a Director who has custody of a child either under an interim or temporary custody order. These rights and responsibilities include:

- consenting to health care for the child;
- making decisions about the child's education and religious upbringing; and
- exercising any other rights to carry out any other responsibilities as guardian of the child, except consent to adoption.

Temporary orders can be extended under s. 44.

When a continuing custody order is made, the Director becomes the sole guardian of the person of the child and the natural parents' legal rights to the child are extinguished. The Director may then consent to the child's adoption. The Public Guardian becomes the sole guardian of the estate of the child. The order, however, does not affect the child's rights with respect to inheritance or succession of property (s. 50(1)). In certain cases, the Director can seek a last chance order of up to six months (s. 49(7)).

Parents can apply to set aside both temporary and continuing (permanent) orders under s. 54. They are also entitled to full disclosure under s. 64. For more information, see *British Columbia (Director of Family and Child Services) v. K.(T.L.)*, [1996] B.C.J. No. 2554 (Prov. Ct. FD) (Q.L.).

Note: Bill 13, Miscellaneous Statutes Amendment Act (No.2), 2011 was introduced on Thursday, May 19, 2011 and contains amendments to or related to the Child, Family and Community Service Act in Part 3, sections 12 – 30. The Bill is available at http://www.leg.bc.ca/39th3rd/1st_read/gov13-1.htm. If the Bill passes, temporary custody orders could be extended where a permanent transfer of custody is planned.

5. Access and Consent Orders

Section 55 of the Child, Family and Community Service Act [CFCSA] allows parents, or other persons, to apply for an access order at the time, or after, an interim or temporary custody order is made. Section 56 provides for applications for access by parents or other persons after a continuing custody order is made. This entitles parents to apply for access visits during any apprehension, whether interim or permanent, if the Director opposes access.

Consent orders under the CFCSA may be an advisable option for parents. A consent order is outlined in s. 60, which provides that the court may make any custody or supervision order without a finding of fact that their child actually needed protection, and without an admission of any of the grounds alleged by the Director for removing the child (ss. 60(4) and (5)).

A consent order requires the written consent of:

- a) the Director;
- b) the child, if 12 years of age or older;
- c) each parent of the child; and
- d) any person with whom the Director may be placing the child in temporary custody.

Children 12 years of age or older must be given notice of the hearings, report copies, etc.

6. Rights of Children in Care of the Director

Section 70 of the Child, Family and Community Service Act [CFCSA] sets out the rights to which children are entitled while in care of the Director. Children in care have the right to: be fed, clothed, and nurtured according to community standards; be informed about plans regarding their care; be consulted with respect to decisions affecting them; reasonable privacy and possession of their personal belongings; be free from corporal punishment; and receive medical and dental care when required. For a complete list of enumerated rights, see s. 70.

7. Priority in Placing Children with a Relative

When deciding where to place a child, the Director must consider the child's best interests (s. 71(1)). The Director must give priority to placing the child with a relative before considering a foster parent, unless that is inconsistent with the child's best interests (s. 71(2)).

Children under protection can be placed in the custody of extended family or other concerned parties (s. 8). This is known as a "kith and kin" agreement. The Director may also refer the matter to a family conference co-ordinator to allow the family to reach an agreement on a 'plan of care' that serves the best interests of the child (ss. 20, 21).

Until March 31, 2010 a relative caring for a child residing in his or her home may have been eligible to receive monthly Child in the Home of a Relative ("CIHR") benefits from the

Ministry of Social Development (previously the Ministry of Employment and Income Assistance). As of April 1, 2010, these benefits are no longer available to new applicants. In the absence of the CIHR benefits, relatives looking after a child in their home may be eligible for the child tax benefit, the B.C. family bonus, the universal child care benefit, and/or the child disability benefit. For more information, see: www.gov.bc.ca/meia/online_resource/verification_and_eligibility/cihr. An alternative (but not a substitute) for relatives to consider is the Extended Family Program benefits available through the Ministry of Children and Family Development (see www.mcf.gov.bc.ca/alternativestofostercare/extended_family.htm). These benefits are intended to be temporary and the relative is not eligible if they have a guardianship order. The application for benefits must be initiated by the child's parent. Priority in Placing Aboriginal Children with an Aboriginal Family

The Director must give priority to placing an Aboriginal child with the child's extended family within the child's Aboriginal community or with another Aboriginal family (s. 71(3)). Section 39(1) mandates notification of the band. See also ss. 2(f), 3(b) and (c), and 4(2) of the CFCSA. If a child is of mixed heritage, the Ministry will generally treat the child as an Aboriginal child and notify the band accordingly.

Certain additional considerations are provided throughout the Act for an Aboriginal, Nisga'a or treaty First Nation's child.

D. *Adoption*

See also **Chapter 3: Family Law, Section XI: Adoption.**

1. Consent to Adoption

Generally, the consent of each of the following is required for a child's adoption: the child, if 12 years of age or older (Adoption Act, s. 13(1)); the birth mother; the father; and any person appointed as the child's guardian. Section 13(2) defines the term "father".

The Adoption Act regulates adoption procedures in British Columbia. According to section 37 the adopted child becomes the child of the adoptive parent and the birth parent ceases to have any parental rights or obligations. A child who has been adopted cannot inherit under a biological parent's will; once adopted the child can only inherit from the adoptive parents, not the biological parents.

2. Disclosure of Identifying Information

Disclosure can be made to any person when disclosure is necessary for the health, safety, or well being of a child or for the purpose of allowing the child to receive a benefit (s.61). Section 62 provides for disclosure to the adoptive parent of an aboriginal child under the age of 19. Section 63 provides for disclosure to an adopted child over the age of 19. Section 64 provides for disclosure to a birth parent once the adopted child is over the age of 19.

Additional disclosure considerations include openness agreements (s.59), disclosure vetos (s. 65) and non-contact declarations (s. 66).

Under the Adoption Act, s. 80, adoptive parents may be eligible for financial assistance from the provincial director of adoption in certain prescribed circumstances.

The Adoption Act sets out several requirements to be met before a child is brought from another province or country. For information on international adoptions, see www.mcf.gov.bc.ca/adoption/intercountry_adoption.htm.

E. School

1. Compulsory Attendance and Registration

The School Act, R.S.B.C. 1996, c. 412 states that all children are entitled to be enrolled in an educational program from age 5, and must be enrolled by the first school day of a school year if, on or before December 31 of that school year, the child will have reached the age of 5 years (s. 3(1)(a)). Parents may however defer enrolment until the first school day of the next school year (i.e. until age 6) (s. 3(2)). Once enrolled, children must remain in an educational program until they are 16 (s. 3(1)(b)). Whether children attend public or private schools, they must be registered on or before September 30 in each year either with a school or with the Minister (s. 13). Students must also comply with the rules, code of conduct, and policies set by the Board or school (s. 6).

Under s. 12 of the School Act, parents are authorized to educate their children at home or elsewhere provided they register their children pursuant to s. 13.

2. Discipline

The Criminal Code (s. 43) allows a schoolteacher to use discipline that is reasonable in the circumstances. This section refers to the use of reasonable force (see the definition given by the Supreme Court of Canada under **Section III.A.6: Discipline**, above). However, the School Act specifically states that discipline of a student must be similar to that of a kind, firm, and judicious parent, but must not include corporal punishment (s. 76(3)).

3. Rights of Parents and Students

Students and parents have the right to consult with a teacher or administrative officer (School Act, ss. 4 and 7(2)). As well as having the right to information regarding the attendance, behaviour and progress of their children in school (s. 7(1)(a)), parents may request an annual report on the general effectiveness of the program their children are enrolled in, without their children's consent. They are also entitled to belong to a parent's advisory council (s. 7(1)(c)). The councils can be formed by application to the Board or Minister of Education, and can advise the Board and staff of the school (s. 8).

4. School Records

Individual students and their parents are entitled to examine, on request, all records pertaining to that student while accompanied by the principal or a person designated by the principal (School Act, s. 9). Student records identifying the student will not be released to other parties except when required by law, or if the student or parent consents to the disclosure in writing.

5. Language of Instruction

Every student in B.C. is entitled to instruction in English (School Act, s. 5). However, under the Canadian Charter of Rights and Freedoms, students whose parents are citizens of Canada have the right to receive primary and secondary school instruction in either English or French if:

- their parents' first language is that of the English or French linguistic minority population of the province in which they reside, and they still understand that language; or
- their parents received their primary school instruction in Canada in English or French and

the parent resides in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province.

6. Other Concerns

The School Act states that public schools must be conducted on strictly secular and non-sectarian principles (s. 76(1)).

Parents are jointly and severally liable for intentional or negligent damage to school property caused by their children (s. 10). There is no action against a Board or its employees unless the actionable conduct included dishonesty, gross negligence, malicious or wilful misconduct, or the cause of action is libel or slander (s. 94(2)). Section 94 does not absolve a Board from vicarious liability.

Any person who believes a child, whether registered or not, is not receiving an educational program can make a report to the superintendent of schools (s. 14(1)). An action lies against that person only if the report is made maliciously (s. 14(3)).

School boards have a duty to provide an educational environment that is free from discriminatory harassment. This rule was affirmed by the Supreme Court of Canada on October 20, 2005, when it upheld a B.C. Human Rights Tribunal finding of discrimination against a B.C. school board in the homophobic harassment of one of its students: see *Board of School Trustees of School District No. 44 (North Vancouver) v. Azmi Jubran, et al.* [2005] SCCA No. 260 (with costs and without reasons). Note that while the student was found to have been discriminated against on the basis of sexual orientation, it was irrelevant whether he identified himself as homosexual, or whether his harassers knew or believed him to be homosexual.

F. *Child Leaving Home or Parent Giving Up Custody of a Child*

Children may leave home before the age of majority, or alternatively, parents may voluntarily give up legal custody of their children. Please note that “emancipation” (a legal mechanism by which a person may be legally separated from his or her parents before the age of majority) is not a legal remedy for children in B.C. as it is in some parts of the United States.

1. Rights of the Child

Children may leave home as soon as they are able to support themselves. The following considerations should be kept in mind:

- a) under the School Act, a child must attend school until age 16 (s. 3(1)(b)). It would be extremely difficult for the child to go to school and maintain a job to support him or herself sufficiently at a younger age than this;
- b) a child under 15 needs written permission from their parent or guardian prior to working (Employment Standards Act, R.S.B.C. 1996, c.113, s. 9(1)). Additionally, a child under 12 needs the written permission of the Director of Employment Standards prior to working (s. 9(2));
- c) pursuant to s. 26(1) of the Child, Family and Community Service Act [CFCSA], a Director may take charge of a child for a period of up to 72 hours if it appears that the child is lost or has run away. If the person responsible for the child is not located by the end of the 72-hour period, the Director no longer has charge of the child (s. 26(5)). (Note that “child” is defined in the CFCSA as a person under the age of 19 years, and includes a youth.);

- d) a child under 19 may qualify for social assistance if he or she does not live with a parent or guardian, and if the ministry is convinced that no parental support is being provided; and
- e) pursuant to s. 91 of the Family Relations Act a child may be eligible for child support payments from their parents. However, children have been found to have withdrawn from their parents' care and control when they live with a boyfriend or girlfriend who provides for their needs, have moved out of their parents' home and refuse to return, or live on their own and have demonstrated they are capable of independently supporting themselves financially.

2. Giving Up Custody of a Child

There are four basic ways that a parent can voluntarily give up legal custody of a child. This is done by transferring the rights that the parent possessed:

- a) by a custody and guardianship order under the Family Relations Act (s. 30);
- b) by making a will (which would take effect only on the death of the parent), if the parent has sole guardianship (Infants Act, s. 50);
- c) by the parent(s) consenting to the adoption of the child by other persons (Adoption Act, R.S.B.C. 1996, c. 5, s. 13(1)); or
- d) by a written agreement between the parent and the Director of Child, Family and Community Service where the parent transfers his or her rights to the Director (Child, Family and Community Service Act [CFCSA], ss. 6 and 7).

G. *Medical Attention*

1. Obligation to Provide Treatment

The Criminal Code (s. 215) imposes criminal sanctions on parents who fail to provide their children with the necessities of life until they reach the age of 16. This has been held to include adequate medical treatment, and a court may also extend the duty to an older child who cannot become independent of their parent(s) due to factors including age and illness. Section 218 of the Criminal Code imposes criminal sanctions on any person who abandons or exposes a child less than 10 years of age to the risk of permanent injury, damage to his or her health, or risk to his or her life.

Under the CFCSA, children under the age of 19 may be removed if they are deprived of necessary medical attention, but only by a court order (s. 29). Where a child is removed, emergency medical care can be given at the Director's authorization (s. 32). In cases where the only issue is the parents' refusal of necessary medical attention, the Director can apply for a court order authorizing the medical care without removing the child from the parents' custody (s. 29).

2. Consent to Treatment

In Canadian case law, the courts have found that a minor can consent to treatment as a "mature minor" if that particular person has the mental capacity to understand the nature and risks of that particular treatment (see also Infants Act, s. 17). A minor, who is living away from home, working, or married, may be found to be autonomous, and free from parental control, and thus capable of consenting to or refusing treatment on his or her own behalf.

Under the Infants Act, (s. 17), a minor can consent to surgical, medical, mental, or dental treatment without the agreement of their parents, so long as the health care provider has: i) explained to the infant and has been satisfied that the infant understands the nature and consequences and the reasonably foreseeable benefits and risks of the health care; and ii) has made reasonable efforts to determine and has concluded that the health care is in the infant's best interests. This includes requests for birth control advice and products, and for abortions.

A court of competent jurisdiction may order medical treatment for any child if the court is satisfied that such treatment is required, and that parental consent is being unreasonably withheld. This is part of the inherent *parens patriae* (guardian of persons under a legal disability) jurisdiction of the Supreme Court, and is now codified under s. 29 of the Child, Family and Community Service Act [CFCSA].

H. *Wills and Estates*

Note: On Sept. 24, 2009, Bill 4, the *Wills, Estates and Succession Act*, was passed by the B.C. government. This Act is **not** yet in effect. For more information, please see <http://www.ag.gov.bc.ca/justice-reform-initiatives/civil-project/wills-estates-qa/index.htm>

1. **Ability to Inherit Under a Will**

As a general rule, anyone named in a will can inherit under that will.

Minors cannot sign a valid receipt for their share in an estate. In practical terms, this means that minors must wait until they reach the age of majority to inherit under a will. The parent, guardian, or other trustee for the benefit of the child would hold title to any real property until the child reaches age 19. When property is held by a trustee in trust for a child under the age of 19, the trustee is deemed to have the power to encroach and may, at his or her discretion, apply all or part of the income to which the child may be entitled towards the maintenance and/or education of the child (Trustee Act, R.S.B.C. 1996, c. 464, s. 24).

The Estate Administration Act, R.S.B.C. 1996, c. 122, s. 75 provides that where there is no trustee in the estate, money bequeathed to a minor is paid to the Public Guardian in trust for that minor. The Infants Act (s. 14(1)) states that, subject to the terms of a trust set up in a will, the Public Guardian may authorize payment of all or part of the trust for the maintenance, education or benefit of the infant.

If part of an estate is distributed to a minor, the executor or administrator of an estate is left open to an action by the minor (upon reaching the age of majority) to repay all the monies distributed in a manner not in accordance with the terms of the will.

2. **Ability to Make a Will**

Under s. 7 of the Wills Act, R.S.B.C. 1996, c. 489, no person under the age of 19 can make a will unless he or she:

- a) is or has been married;
- b) is on active service with the Canadian Armed Forces; or
- c) is a mariner at sea.

I. Contracts

The Infants Act, the Sale of Goods Act, R.S.B.C. 1996, c. 410, and the common law govern contracts involving minors.

Under the Infants Act (s. 19), a contract made by a person under the age of majority is unenforceable against the minor unless it is:

- a) a contract specified under another enactment to be enforceable against an infant (s. 19(1)(a)). For example, the Residential Tenancy Act allows for young persons to enter into valid landlord-tenant contracts;
- b) affirmed by the minor on attaining the age of majority (no new consideration is required to make the contract binding) (s. 19(1)(b));
- c) performed or partially performed within one year after the minor attains the age of majority (s. 19(1)(c)); or
- d) not repudiated by the minor within one year after attaining the age of majority (s. 19(1)(d)).

Where the contract is unenforceable, the minor or another party to the contract can apply to the Supreme Court for relief (s. 20(1)). The Supreme Court also has the power to grant a minor full contractual capacity (s. 21), and the Public Guardian has the authority to grant contractual capacity for any specific contract that a minor has entered into or proposes to enter into, if making such an order would be in the best interests of the minor (s. 22). The Act does not protect an adult giving a guarantee or indemnity on behalf of an infant from an action if the infant fails to perform a contractual obligation (s. 23).

Children who lie about their age, claiming to have attained the age of majority, cannot later repudiate their contracts on the ground of their minority (s. 20(3)(b)). This will only apply where the other party was actually misled and the minor actively misrepresented his or her age (s. 20(4)).

The Public Guardian may petition the court on behalf of a minor to dispose of all or part of land in which the minor has an interest (s. 2 (1)). Any disposition granted, accepted or made by the Public Guardian on behalf of the minor is as effective as if the minor had been of full age (s. 4(1)).

J. Motor Vehicles

1. Ability to Obtain a License (Motor Vehicle Act)

An individual must be 19 to qualify for a driver's licence. If an individual is between 16 and 18 years of age, a parent or guardian must submit their application for a driver's licence (Motor Vehicle Act, s. 32). ICBC will **never** grant a licence to someone under the age of 16.

B.C. has a Graduated Licensing Program; see <http://www.icbc.com/driver-licensing/getting-licensed/graduated-licensing>. Further changes to the Graduated Licensing Program were made effective October 6, 2003 ("the new GLP rules"). The Graduated Licensing Program ("GLP") applies to all new drivers in B.C.; the only difference in relation to minors is the requirement of parental consent to the minor's application for a licence. Any new driver, including a minor, must pass a multiple choice knowledge test to receive a learner's licence.

Under the GLP rules, a person with a learner's licence must:

- display a red "L" on his or her vehicle;
- a person with a learner's licence must be accompanied by a supervisor 25 years or older

with a valid Class 1 - 5 drivers licence when driving;

- not have more than two passengers (including the supervisor) in his or her vehicle;
- not drive between the hours of midnight and five a.m.;
- have an alcohol level of zero; and
- not use hand-held or hands-free electronic devices including cell phones.

The learners stage now lasts 12 months. Once the individual has waited the required time period, he or she must pass a road test to be awarded a class 7 novice driver's licence.

Under the GLP rules, a person with a novice driver's licence must:

- display a green "N" on his or her vehicle for 24 months;
- have an alcohol level of zero;
- not use either a hand-held or hands-free cellphone or portable electronic device while driving;
- only have one passenger unless accompanied by a supervisor 25 years or older who has a valid class 1 - 5 licence. However, immediate family is allowed in the vehicle with no supervisor present; and
- if a person with a novice license receives a driving prohibition, they must restart the novice stage.

After 24 months, the person must pass a second road test to be awarded a class 5 driver's licence. This 24 month period may be shortened by six months if a driver training program with a GLP designation is completed. A person may be required to wait longer than 24 months to take a second road test if at any point their licence is suspended, cancelled, surrendered or expires.

Under s. 89, the right to apply for or obtain a driver's license is suspended when a person is prohibited from driving a motor vehicle under the Motor Vehicle Act, Young Offenders (B.C.) Act or Criminal Code.

For full details on the GLP and for rules that apply to motorcycle licensing visit <http://www.icbc.com/driver-licensing/getting-licensed/motorcycle-licence>.

2. **ICBC (Insurance (Vehicle) Act)**

As long as minors are insured by ICBC their rates are the same as those of adults. Under the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231, payment to a minor must be made to the Public Guardian to be administered as that trustee considers advisable, but this does not apply to payment or insurance money made for or on behalf of a minor as indemnity for loss of, damage to, or loss of use of property (s. 32).

3. **Parents' Liability**

In B.C., the Insurance (Motor Vehicle) Act clearly entitles a plaintiff to sue the registered owner of a motor vehicle as well as the driver. In other words, a parent can be liable if their child causes an accident while driving a vehicle registered in the parent's name.

Provided that the minor holds a valid driver's licence and there is valid insurance coverage for the vehicle, where a driver who is a minor causes an accident, ICBC will pay the plaintiff's damage as it would for any other driver.

K. Employment and Unemployment

1. Ability to Work

Any person aged 15 years or over may work. Effective May 1st, 2011 the minimum wage, which is \$8.75 per hour (Employment Standards Regulation, B.C. Reg. 396/95, s.15 as amended by B.C. Reg. 67/2011. . The Training Wage has been repealed. The minimum wage rate will increase twice more, to \$9.50 on November 1, 2011 and to \$10.25 on May 1, 2012. A separate minimum wage of \$8.50 for employees who serve liquor came into effect on May 1, 2011. This rate will increase to \$8.75 on November 1, 2011 and to \$9.00 on May 1, 2012. A child between the ages of 12 and 14 needs written permission from their parent or guardian prior to working. The employer must have this written consent on file indicating that the parent or guardian knows where the child is working, the hours of the work, and the type of work. In addition to the written consent of the parent or guardian, a child under the age of 12 must also have written permission of the Director of Employment Standards prior to working. For complete details of conditions, see www.labour.gov.bc.ca/esb or call 1-800-663-7867.

Special rules apply for children working in the entertainment industry. For details on children working in the entertainment industry, visit www.labour.gov.bc.ca/esb/chldflm.

Minors as young as 16 can apply through Canada Employment for job training in a vocational school, provided that they are citizens or landed immigrants, have been out of school for one year, and have no employable skills.

2. Employment Insurance

As long as a minor is employed in insurable employment and is paying into the plan, a minor is eligible in the same manner as an adult.

See **Chapter 8: Employment Insurance** for details on qualifications.

3. Workers' Compensation

Section 12 of the Workers' Compensation Act, R.S.B.C. 1996, c. 492 states that a worker under the age of 19 is *sui juris* for the purpose of Part 1 of the Act, which means that workers who are minors are under no legal disability and are considered, for purposes of the Act, capable of managing their own affairs as if they were adults.

See **Chapter 7: Workers' Compensation** for more information.

4. Labour Relations Board

A minor is under no disability for the purposes of the Labour Relations Code, R.S.B.C. 1996, c. 244 and its regulations. As long as the minor meets the definition of an "employee" under s. 1(1), the services and remedies of the Labour Relations Code are available.

See **Chapter 6: Employment Law** for more information.

5. Income Assistance for Children and Youth

Minors under 19 who do not live with their parents or guardians have the right to apply for income assistance from the Ministry of Social Development. Before granting assistance to such a minor, the Ministry must make reasonable efforts to have the minor's parents or guardians assume financial responsibility for the minor's support. If the parents or guardians are unwilling to support the minor, the Ministry may grant the minor income assistance.

The Ministry will refer minors under 17 who apply for income assistance to a social worker with the Ministry of Child and Family Development before assistance is provided. The Ministry will refer minors between 17 and 19 to a social worker only if the Ministry considers there to be child protection issues.

Disabled youths may be eligible for adult disability benefits at the age of 18, even if they live with their parents. These benefits are called benefits for Persons with Disabilities ("PWD"). To qualify, a youth must have a severe mental or physical impairment that, in the opinion of a medical practitioner is likely to continue for at least two years. Additionally, this impairment must directly and significantly restrict the person's ability to perform daily living activities either continuously or periodically for extended periods, in the opinion of a health professional. Finally, as a result of those restrictions, the person must require help to perform those activities (see **Chapter 21: Welfare Law**, and the [Employment and Assistance for Person with Disabilities Act](#), S.B.C. 2002, c. 41, s. 2(2)). An application for PWD benefits can be started 6 months before the youth's 18th birthday.

Youths between the ages of 16 to 18 years of age who have left home and do not have a parent or other persons willing to take responsibility for him or her, or who cannot return home for reasons of safety, may be eligible for a Youth Agreement with the Ministry of Child and Family Development. A Youth Agreement assists at-risk youth to live independently, return to school and gain work experience or life skills. For more information on whether a person qualifies, contact the nearest Ministry for Children and Families office. Also see www.mcf.gov.bc.ca/youth/agreements.htm for more information regarding youth agreements.

As of April 1, 2010, the Ministry of Social Development will no longer pay Child in the Home of a Relative benefits to new applicants. For more information, see **Chapter 21: Welfare Law**.

6. Child Disability Benefit

The Child Disability Benefit (CDB) is a non-taxable supplement to the Canada Child Tax Benefit (CCTB) and Children's Special Allowance. To receive the CDB, a child must be eligible to receive the CCTB and must also qualify for the Disability Tax Credit (DTC). Not all children with disabilities qualify. For more information about eligibility visit the Canada Revenue Agency website at www.cra-arc.gc.ca/bnfts/dsblty-eng.html or call 1-800-387-1193.

The CDB provides up to \$2,455 per year, per child who qualifies for the disability amount, for low- and modest-income families caring for children under the age of 18 who have a severe and prolonged mental or physical impairment.

7. Universal Childcare Benefit

In July 2006, the Government launched the Universal Childcare Benefit (UCCB), a new benefit paid monthly to help eligible families provide child care for their children less than 6 years of age. The UCCB will provide families a \$100 monthly payment (up to \$1,200 annually) for each child less than six years of age. It is paid separately from the Canada Child Tax Benefit (CCTB). The UCCB is taxable. One must apply for UCCB through Canada

Revenue Agency.

For more information on eligibility, the application process and access to an online application, visit the Canada Revenue Agency web site at: <http://www.cra-arc.gc.ca/bnfts/uccb-puge/menu-eng.html> or call 1-800-387-1193.

For general information on UCCB, see the web site: www.universalchildcare.ca or call 1-800-622-6232.

L. *Civil Actions*

The ability of persons under disability, including minors, to take a civil action is governed by Supreme Court Civil Rules, BC Reg 168/2009, Rule 20-2 (2). Section 1 of the Age of Majority Act, R.S.B.C. 1996, c. 7 defines “infants” as any person under the age of 19. Infants are liable for their own torts, although special rules relating to the capacity of a very young child to form the necessary intent may protect the child to some degree. There are also statutory exceptions to this general rule (see s. 10 of the School Act). See also Parental Responsibility Act, S.B.C. 2001, c. 45, mentioned below.

NOTE: Rules regulating family law cases are different. For example, a minor parent who is a party to a proceeding brought in the Provincial Court of B.C. under the Family Relations Act may not need a litigation guardian: see *Smythe v. Bourgeois*, 2008 BCSC 1847.

1. Infant as Plaintiff

An infant plaintiff is presumed to have a lack of capacity. Therefore, infants may only commence actions in their own names through a guardian *ad litem* (litigation guardian), with the guardian’s status specified. Both the guardian *ad litem* and the minor are named as parties to the action in the style of cause. The consent of the guardian *ad litem* and a certificate of fitness must be filed with the court before commencement of the action.

Any adult person who ordinarily lives in B.C. can act as guardian *ad litem* (usually a parent, relative, or guardian), unless the court orders otherwise or an enactment otherwise provides. (Supreme Court Civil Rules, Rule 20-2 (5). The guardian *ad litem* should not have an interest contrary to that of the minor Supreme Court Civil Rules, Rule 20-2 (8).

NOTE: A guardian *ad litem* who begins an action on behalf of a minor may be liable for costs.

At the Supreme Court of B.C., a guardian *ad litem* (other than the Public Guardian) must act through a solicitor Supreme Court Civil Rules, Rule 20-2 (4). The Supreme Court must approve settlements in excess of \$50,000 (Infants Act, s. 40 (7-8)).

At Small Claims Court, a guardian *ad litem* who makes a claim for personal injury must act through a solicitor, and may not settle without the consent of the Public Guardian (Small Claims Rules, BC Reg 261/93, Rule 17(19)).

Under Rule 20-2 (12-13) of the Supreme Court Civil Rules, an infant party to a proceeding who attains the age of majority during those proceedings may file an affidavit confirming the attainment of the age of majority. After delivering a copy to all parties of record, the infant assumes conduct of the claim. The style of proceedings must no longer refer to a guardian *ad litem* for the infant who is now of age.

2. Infant as Defendant

An infant defendant is also presumed to have a lack of capacity. The infant therefore also acts

through a guardian *ad litem*. However, if the infant attains the age of majority during the course of the proceeding, he or she can file an affidavit confirming that fact and assume conduct of the defence. The style of cause must no longer refer to a guardian *ad litem*. (Supreme Court Civil Rules, Rule 20-2).

In a proceeding against an infant, whether resident in B.C. or not, service must be made on a parent or guardian resident in B.C. (Infants Act, s. 48(1)).

Before there can be a default judgment, a guardian *ad litem* must be appointed unless there was proper notice to all guardians of the infant within the province.

The guardian *ad litem* must appear in court, but is not liable for costs of the action unless guilty of unreasonable conduct.

3. Infant as Witness

Section 16.1 (1) of the Canada Evidence Act (CEA), R.S.C. 1985, c. C-5 provides that a person under 14 years of age is presumed to have capacity to testify. Any person who challenges the capacity of a witness under 14 years of age bears the burden of satisfying the court that there is an issue as to the capacity to understand and respond to questions(s. 16.1 (4)).

The Canada Evidence Act, (ss. 16(1) and (2)) provides that evidence of a person 14 years of age or older may be received if the court is satisfied that the child understands the duty of speaking the truth. Such evidence no longer needs to be corroborated. Any person who challenges the capacity of a witness 14 years of age or older bears the burden of satisfying the court that capacity is an issue (s. 16(5)).

The Youth Criminal Justice Act [YCJA] (s. 151) requires that the evidence of a child witness only be taken in proceedings after the youth court justice has instructed the child as to the duty to speak the truth and the consequences of failing to do so. Such instructions are mandatory for a child less than 12 years of age. For children between the ages of 12 and 18, instructions are appropriate where the judge or justice “considers it necessary”. See **Chapter 2: Youth Justice** for more information on child witnesses.

4. Parental Responsibility

The Parental Responsibility Act, SBC 2001, c. 45, came into effect January 1, 2002. The Act allows parents to be found liable for the actions of their children. It is limited to Small Claims actions. Parents are also provided with the defence of reasonable supervision. As well, the courts are given wide discretion to consider whether parents exerted reasonable effort to control their children when determining whether the parents are liable.

5. Statute of Limitations

Section 7(2) of the Limitation Act, R.S.B.C. 1996, c. 266 provides that with respect to a limitation period fixed by the Act, the running of time is postponed until the child becomes 19 and then commences to run as per the provisions of the Act. However, in cases where a defendant delivers notice of a potential action to the child’s guardian and to the Public Guardian, time can commence to run as if there was no incapacity due to age (s. 7(6)). For example, ICBC may deliver a notice to an infant plaintiff in the form of a letter, informing the infant that they are aware of a potential action. This letter effectively begins the running of time with respect to the limitation period.