

Publisher's Note

2019 — Release 2

Previous release was 2019-1

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Kirwin, Stringer

Child Protection Law in Canada 2nd Edition

This resource organizes and updates child protection case law and unreported cases for Canadian common law provinces and territories.

This release includes updates to the case law and commentary in Chapters 4 (Motions), 5 (Protection Application – the Threshold Finding), 7 (Variation and Status Review Applications), 8 (Evidence at Trial), 9 (Summary Proceeding and Agreement), and 11 (Appeals).

Highlights

- **Motions – Consent to adoption** – The guardian of a represented adult does not have the authority to consent to the adoption of the represented adult's minor child: *SC v. TC*, 2018 ABQB 1051, 2018 CarswellAlta 3247 (Alta. Q.B.).
- **Protection Application – The Threshold Finding – Grounds** – Even where a child has not been harmed by a parent's chaotic lifestyle, that lifestyle may still be found to cause a risk of physical harm to the child. For a finding of "risk of emotional harm", it is not sufficient to show the existence of reasonable grounds to believe that a risk exists, the Society must show that the risk does exist and do

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so on a balance of probabilities: *Children's Aid Society of Algoma v. J.B.*, 2019 ONCJ 6, 2019 CarswellOnt 332 (Ont. C.J.).

- **Variation and Status Review Application – Permanent Guardianship Order** – Even where parents have serious parenting deficits, if their plan meets more of the best interest criteria than a plan presented by the Minister, the child will be returned to the parent: *Minister of Families and Children v. S.B.*, 2018 NBQB 245, 2018 CarswellNB 614 (N.B. Q.B.).
- **Evidence at Trial – Charter** – Where a CFS worker attends a home to investigate a child protection concern, she is authorized to search the home and apprehend without a warrant only if the children are in immediate danger or left without supervision: *CFS Western Manitoba v. A.J.A.*, 2018 MBQB 187, 2018 CarswellMan 566 (Man. Q.B.).
- **Appeals** – On an interim stay application, the court must balance the harm or convenience that may result from the granting or refusal of a stay and shall not conduct a de novo hearing on the best interests of the child: *D.B. v. Alberta (Director of Child, Youth and Family Enhancement)*, 2017 ABCA 319, 2017 CarswellAlta 3070 (Alta. C.A.).