

Reading List



Reading List

Legal education requirements for Gladue roster members

A roster member must attest to having reviewed the following material:

- a. The Criminal Code of Canada, including sections 718.2(e) and 113
- b. The Youth Criminal Justice Act, including section 38(2)(d)
- c. The Canada Evidence Act
- d. Significant leading and current jurisprudence including:
 - i. R. v. Gladue, [1999] 1 S.C.R. 688
 - ii. R. v. Silversmith, [2008] O.J. No. 4646
 - iii. R. v. Brant, [2008] O.J. No. 5375
 - iv. R. v. Batisse, 2009 ONCA 114
 - v. R. v. Robsinson, 2009 ONCA 205
 - vi. R v. Jacko, 2010 ONCA 452
 - vii. R. v. Ipeelee, [2012] 1 S.C.R. 433
 - viii. R. v. Bauer, 2013 ONCA 691
 - ix. R. v. Armitage, 2015 ONCJ 64
 - x. R. v. Spence, 2015 ONSC 1692
 - xi. R. v. Kreko, 2016 ONCA 367
- e. LAO LAW memoranda including:
 - i. i. S10-37 Gladue Sentencing Submissions
 - ii. S10-38 Aboriginal Offenders - Advocating For Alternatives to a Custodial Sentence
 - iii. S10-39 Ontario Resources for Aboriginal Offenders

- iv. ZS10-74 Application of Gladue Principles
 - v. ZS10-47 Sentencing Aboriginal Offenders
 - vi. ZP11-63 Application of Gladue Principles to Bail hearings
 - vii. ZS10-26 Application of Gladue Factors Beyond Sentencing
- f. Truth and Reconciliation Commission of Canada Final Report Volume 5: Overrepresentation of adults 218-243, Over-representation of youth 252- 257; http://www.myrobust.com/websites/trcinstitution/File/Reports/Volume_5_Legacy_English_Web.pdf
- g. Truth and Reconciliation Commission Calls to Action:
- i. English: http://nctr.ca/assets/reports/Calls_to_Action_English2.pdf
 - ii. French: https://nctr.ca/fr/assets/reports/Final%20Reports/Calls_to_Action_French.pdf rench
- h. Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls including but not limited to Volume 1a: Chapter 8: Confronting Oppression – Right to Justice
https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf
- i. Calls for Justice from The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls:
- a. English: https://www.mmiwg-ffada.ca/wpcontent/uploads/2019/06/Calls_for_Justice.pdf
 - b. French: <https://www.mmiwg-ffada.ca/fr/final-report/>
- j. United Nations Declaration on the rights on Indigenous Peoples;
https://www.un.org/development/desa/indigenouspeoples/wpcontent/uploads/sites/19/2018/11/UNDRIP_E_web.pdf
- k. A Guide for Lawyers Working with Indigenous Peoples;
https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/g/guide_for_lawyers_working_with_indigenous_peoples_may16.pdf
- l. View the continuing legal education video “Gladue at practice CLE”
<https://www.youtube.com/watch?v=lou8PU0o4lo>

Reading List

Refugee and Immigration (General)

- *Immigration and Refugee Protection Act* (IRPA) and associated regulations
- Convention relating to the Status of Refugees
- Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- Rules of the Refugee Protection Division, Immigration Division and the

- Immigration Appeal Division
- IRB Chairperson's Guidelines
- IRB Practice Notices
- Significant jurisprudence
- UNHCR Handbook on Procedures and Criteria for Determining Refugee Status
- *Canada Evidence Act*
- *Interpretation Act*
- Relevant chapters of Immigration, Refugees and Citizenship Canada's (IRCC)
- Operational Instructions and Guidelines

Reading List

Refugee and Immigration (Appellate)

- Materials for the Refugee and Immigration (General) roster authorization
- Rules of the Refugee Appeal Division
- *Federal Courts Act*
- Federal Court Rules
- *Federal Court Immigration and Refugee Protection Rules*

Reading List

Youth Criminal Matters

A roster member must attest to having reviewed the following material:

Legislation:

1. The *Youth Criminal Justice Act*, S.C. 2002, c.1

The Youth Criminal Justice Act (YCJA) creates a separate and unique system for youth criminal justice that has many features not found in the adult criminal justice system. The Supreme Court of Canada has said that the underlying principle of diminished moral blameworthiness has Charter significance. Knowledge and understanding of the following provisions are essential for beginning ethical practice in youth criminal justice.

The YCJA has been developed in recognition of the unique developmental realities of adolescence, a focus on rehabilitation and reintegration and meaningful consequences. Young people have enhanced protection of their rights, and the specialized legislation creates unique law, process, and systems.

- a. Preamble

- b. Section 3: principles
 - c. Sections 1-12: unique definitions
 - d. Section 25 - 33: right to counsel, notice to parents, attendance, bail
 - e. Section 35:
 - f. Section 38-42: Sentencing provisions
 - g. Section 48: reasons have to be given for sentence
 - h. Section 55: Conditions that can be in the order
 - i. Sections 59-60: sentence reviews
 - j. Section 82: proper advice to young person after sentence
 - k. Sections 114-120: primary records sections
 - l. Sections 146- 147: statements
2. The United Nations Convention *on the Rights of the Child*, Can. T.S. 1992

No. 3

- a. Preamble
- b. Articles 1-3, 12, 16, 16, 37, 40

3. The United Nations *Standard Minimum Rules for the Administration of Juvenile Justice* (“Beijing Rules”) (adopted by General Assembly Resolution A/RES/40/33 on November 29, 1985)

- a. Sections 5, 13, 17 and 19

Roster members who are authorized to provide criminal – youth criminal legal services must be familiar with significant leading and current jurisprudence. The following list highlights several important cases that criminal – youth criminal lawyers should review:

- 4. R. v. D.B. [2008] 2 S.C.R. 3; 2008 SCC 25. – diminished moral culpability
- 5. R. v. B.W.P.; R. v. B.V.N., [2006] 1 S.C.R. 941. – general deterrence not applicable
- 6. R. v. L.T.H. 2008 SCC 49. – enhanced protections for statements
- 7. R. v. A.M., 2008 SCC 19 – school searches allowed in some contexts
- 8. R. v. Jarvis, 2019 SCC 10 – privacy rights of a youth at school
- 9. R. v. K.J.M. 2018 ABCA 278 - 11b in youth context (under review by SCC)

10. R. v. S.A.C., 2008 SCC 47 – custody gateway – when is custody an available sentence
11. R. v. R.D. 2010 ONCA 899. – bail – what is a « responsible person »
12. L.S. v. N.B. (2005), 195 C.C.C. (3d) 481. – special records protections – some explanation
13. Toronto Star Newspaper Ltd v. Ontario, 2012 ONCJ 27. – no public access to specific records
14. R. v. T.B.-J., 2017 ONCA 746. – young person taking substantial rehab efforts on their own

Reading List

Criminal Mental Health Matters

A roster member must attest to having reviewed the following material:

Legislation and Court and Tribunal Resources:

- Criminal Code Part XX.1 (Mental Disorder), as well as sections 16 and 2 of the code;
- Youth Criminal Justice Act sections 34 and 146;
- Mental Health Act sections 21 and 22 (orders for a mental disorder examination);
- NCR and fitness hearings, treatment and “keep fit” orders, and applications to assess:
 - fitness to stand trial
 - not criminally responsible on account of mental disorder (NCR);
- Ontario Review Board (ORB) Rules of Procedure¹;
- Patient rights under the Ontario Mental Health Act (including Forms 1, 2, 6 and 8), *Health Care Consent Act*, and *Personal Health Information Protection Act*;
- The processes, programs and services of Mental Health Court and associated court support workers;

Community Resources:

- The availability of local resources, including alternative treatment options and the extent of institutional services; the Psychiatric Patient Advocate Office and other organizations such as ConnexOntario;
- General familiarity with the essential types of mental disorders so as to allow for the practical application in the law, including sufficient knowledge to allow for review of diagnostic tools, medical/expert evidence and mental health resources

Jurisprudence:

Roster members who are authorized to provide criminal mental health legal services must be familiar with significant leading and current family law jurisprudence.

The following list highlights several important cases that criminal mental health lawyers should review:

1 <http://www.orb.on.ca/scripts/en/legal/orb-rules.pdf>

- Disease of the mind and criminal responsibility:
 - *Cooper v. The Queen* [1980] 1 S.C.R. 1149
 - *R. v. Swain*, [1991] 1 S.C.R. 933 (NCR)
- Fitness:
 - *R. v. Taylor*, [1992] 77 C.C.C. (3d) 551 (Ont. C.A.)
 - *R. v. Morrissey* 2007 ONCA 770 (CanLII)
- ORB caselaw:
 - *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 SCR 62521
 - *Pinet v. St. Thomas Psychiatric Hospital* [2004] 1 SCR 528

Reading List

Family Matters

A roster member must attest to having reviewed the following material:

Legislation

- The Family Law Act
- The Children's Law Reform Act
- The Divorce Act
- The Family Responsibility and Support Arrears Enforcement Act
- The Interjurisdictional Support Orders Act
- The Child Support Guidelines (regulation under the Family Law Act)
- The Child Support Tables (available under the federal Divorce Act)
- The Child, Youth and Family Services Act
- The Family Law Rules
- The Rules of Civil Procedure
- The Evidence Act (federal and provincial)
- The Law Society of Ontario's Rules of Professional Conduct
- The Legal Aid Services Act, 2020
- The Canadian Charter of Rights and Freedoms
- The Courts of Justice Act

- The Succession Law Reform Act
- The Income Tax Act
- Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters
- Hague Convention on the Civil Aspects of International Child Abduction
- The Spousal Support Advisory Guidelines
- The Marriage Act
- The Partition Act
- The Change of Name Act
- The Fraudulent Conveyances Act
- The Intercountry Adoption Act
- The Pension Benefits Division Act
- The Arbitration Act
- The Family Homes on Reserves and Matrimonial Interests or Rights Act
- The Bankruptcy Act
- The Land Titles Act
- The Criminal Code of Canada
- The Youth Criminal Justice Act
- The Immigration and Refugee Protection Act
- The Law Society Act
- The Pension Benefits Division Act
- The Pension Benefits Standards Act

Significant Leading and Current Jurisprudence

Roster members who are authorized to provide family law services must be familiar with significant leading and current family law jurisprudence.

The following list highlights several important cases that family lawyers should review:

Parenting (Custody and Access):

- *Gordon v. Goertz*, [1996] 2 SCR 27, 1996 CanLII 191 (SCC) (mobility, best interests of the child, variation of custody and access orders, material change in circumstances)
- *Young v. Young*, 4 SCR 3, 1993 CanLII 34 (SCC) (religion, rights of an access parent, best interests of the child)

- Kaplanis v. Kaplanis, 2005 CanLII 1625 (ON CA)(joint custody, best interests of the child)
- Ladisa v. Ladisa, 2005 CanLII 1627 (ON CA)(joint custody, spousal support)
- Linton v. Clarke, 1994 CanLII 8894 (ON SCDC) (custody and access assessment)

Child Support:

- D.B.S. v. S.R.G., [2006] 2 SCR 231, 2006 SCC 37 (CanLII) (retroactive child support)
- Lewi v. Lewi, 2006 CanLII 15446 (ON CA) (child support for adult children)
- Park v. Thompson, 2005 CanLII 14132 (ON CA) (adult children)
- Francis v. Baker, [1999] 2 SCR 250, 1999 CanLII 659 (SCC) (section 4 of the Guidelines)
- Contino v. Leonelli-Contino, [2005] 3 SCR 217, 2005 SCC 63 (SCC) (child support where both parents have the children more than 40% of the time)
- Chartier v. Chartier, [1999] 1 SCR 242, 1999 CanLII 707 (SCC) (child support payable by a step-parent)
- Drygala v. Pauli, 2002 CanLII 41868 (ON CA) (section 19 of the Guidelines, intentional underemployment)
- DiFrancesco v. Coutu, 2001 CanLII 8613 (ON CA) (rescission of arrears)
- Senos v. Karcz, 2014 ONCA 459 (CanLII) (child support for Ontario Disability Support Program recipients)

Spousal Support:

- Miglin v. Miglin, [2003] 1 SCR 303, 2003 SCC 24 (CanLII) (spousal support in the face of a spousal support release)
- Fisher v. Fisher, 2008 ONCA 11 (CanLII) (Spousal Support Advisory Guidelines)
- Bracklow v. Bracklow, [1999] 1 SCR 420, 1999 CanLII 715 (SCC) (entitlement to spousal support)
- Boston v. Boston, [2001] 2 SCR 413, 2001 SCC 43 (CanLII) (pensions and “double dipping”)
- Willick v. Willick, [1994] 3 SCR 670, 1994 CanLII 28 (SCC) (variation of support orders, material change in circumstances)
- Moge v. Moge, [1992] 3 SCR 813, 1992 CanLII 25 (SCC) (entitlement to spousal support, objectives of spousal support, self-sufficiency)
- Davis v. Crawford, 2011 ONCA 294 (CanLII) (broadens the circumstances in which lump sum spousal support payments can be awarded)

Property:

- Stone v. Stone, 2001 CanLII 24110 (ON CA) (equalization of net family property, unequal division of net family property)
- Rawluk v. Rawluk, [1990] 1 SCR 70, 1990 CanLII 152 (SCC) (equalization of net family property,

resulting trusts, constructive trusts)

- Peter v. Beblow, [1993] 1 SCR 980, 1993 CanLII 126 (SCC) (constructive trusts)
- Best v. Best, [1999] 2 SCR 868, 1999 CanLII 700 (SCC) (valuation of pensions)
- Serra v. Serra, 2009 ONCA 105 (CanLII) (unequal division of net family property)
- LeVan v. LeVan, 2008 ONCA 388 (CanLII) (setting aside domestic contracts, unequal division of net family property)
- Czieslik v. Ayuso, 2007 ONCA 305 (CanLII) (unequal division of net family property)
- Kerr v. Baranow, [2011] 1 SCR 269, 2011 SCC 10 (CanLII) (clarifies the law on constructive and resulting trusts and unjust enrichment on the breakdown of domestic partnerships)

Motions to Change/Variations:

- Willick v. Willick [1994] 3 SCR. 670, 1994 CanLII 28 (SCC) (variation of support orders, material change in circumstances)
- L.M.P. v. L.S., [2001] 3 SCR 775, 2011 SCC 64 (CanLII) (variation of spousal support orders, material change in circumstances)

Separation Agreements and Disclosure Obligations:

- Rick v. Brandsema, [2009] 1 SCR 295, 2009 SCC 10 (CanLII) (separation agreements, unconscionability)
- Marinangeli v. Marinangeli, 2003 CanLII 27673 (ON CA) (minutes of settlement, child support, material change of circumstances)

Summary Judgment Motions:

- Hryniak v. Mauldin, [2014] 1 SCR 87, 2014 SCC 7 (CanLII) (summary judgment motions, purpose of summary judgment motions, access to justice, proportionality)

Hague Convention on International Child Abduction

- Office of the Children's Lawyer v. John Paul Balev, et al., 2017 CanLII 23874 (SCC) (interpretation of "habitual residence" under the Convention; best interests of the child; intentions of caregivers)

Hague Convention on Service

- Wang v. Lin, 2016 ONSC 3967 (CanLII) (applicability of Hague

Convention on Service, requirements for service of family law documents outside of Canada)

Urgent Motions

- Rosen v. Rosen, 2005 CanLII 480 (ON SC) (definition of urgency; requirements for establishing urgency)
- Hood v. Hood, 2001 CanLII 29129 (ON SC) (consideration of urgency)