

father is by law entitled to the custody and guardianship of his children and cannot be deprived of his minor child, except for insanity, or gross misconduct; nor can he deprive himself of his paternal right; and any contract to the contrary cannot bind him, as it is immoral in the eye of the law.<sup>98</sup> As a general rule, where a minor is brought before the Court by *habeas corpus*, if he be of an age to exercise a choice, the Court leaves him to elect as to the custody in which he will be.<sup>99</sup> The mother has an absolute right to the charge of a child until it is twelve years old (the father being dead) unless it is established that she is disqualified by misconduct, or is unable to provide for the child.<sup>100</sup>

An unemancipated minor cannot leave his father's house without his permission.<sup>101</sup> Emancipation only modifies the condition of the minor; it does not put an end to the minority, nor does it confer all the rights resulting from majority. Every minor is of right emancipated by marriage.<sup>102</sup> A tutor (or guardian) for an infant may be appointed by a competent Court on the advice of a family council. The family council must consist of at least seven near relations, who must be males over twenty-one years of age.<sup>103</sup>

Quebec is the only Province in Canada where children born out of wedlock are legitimated by the subsequent marriage of their father and mother.<sup>104</sup> An illegitimate child has a right to establish judicially his claim of paternity or maternity, and upon the forced or voluntary acknowledgment by his father or mother of him as their illegitimate child, he has the right to demand maintenance from each of them, according to their circumstances.<sup>105</sup>

<sup>98</sup>Barlow v. Kennedy (1871), 17 Lower Canada Jurist, p. 253.

<sup>99</sup>Regina v. Hull (1876), 3 Quebec Law Reports, p. 136.

<sup>100</sup>Ex parte Ham (1883), 27 Lower Canada Jurist, p. 127.

<sup>101</sup>Civil Code of Quebec, Art. 244.

<sup>102</sup>Id., Arts. 247, 248 & 311.

<sup>103</sup>Id., Arts. 249, 251 & 252.

<sup>104</sup>Id., Art. 237.

<sup>105</sup>Id., Arts. 240 & 241.