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***A Sampling of Canadian Laws Affecting Children : Measuring Up to the Convention on
the Rights of the Child***

**The Canadian Coalition for the Rights of Children
REVISED Chart Analysis to Submissions Prepared for
THE UNITED NATIONS COMMITTEE ON THE RIGHTS
OF THE CHILD**

Subject and CRC ref.	Issue	Statutory and, or Care Reference	Observation	Statistical, Empirical Writings
<p>Child Abuse: Corporal Punishment</p> <p>Arts. 3, 6, 24</p>	<p>using physical force as discipline, or a stated in <i>Campbeau v. R.</i> (1951), 103 C.C.C. 355 (Que.C.a.): "That the punishment naturally many cause harm hardly needs to be stated; otherwise its whole purpose would be lost...the mere fact that the children suffered contusions and bruises is not in itself proof of exercise of undue force"..</p>	<p>See s. 43 of the Criminal Code R.S.C. 1985, c.C-46. & <i>Campbeau v.R.</i> (1951) ,103 C.C.C. 355 (Que.C.A.), but see <i>Ogg-Moss v.R.</i> (1984), 11 D.L.R. (4th) 549 (S.C.C.) for qualifying limitation on the definition of persons who stand "in the place of a parent".</p>	<p>federal law sanctioning use of force targeted at children; discipline = phys. force ; contrary to the writings of the Law Reform Comm. (Canada), abolition of corporal punishment in all but 3 provincial education statues, & see Ont.'S CFSA, s.101 which prohibits its application for children in state care; banned in Sweden (1979), Finland (1984), Denmark(1986), Norway (1987), Austria (1989)... systemic delay defeats the intended remedial natural of the legislation; state authorities subject to budget constraint prone to placement outside of the home; where is the concept of fairness? And to whom?</p>	<p>One case as recent as 1980 found it not unreasonable for a teacher to slap a pupil on the side of the head in response to being called "Papa Smurf" <i>R.v.Dimmel</i> (1980), 55 C.C.C. (2d) 239 (nt. Dist. Ct.); In <i>Campbell and Cosans v. United Kingdom</i> (1982), 4 E.H.R.R. 293 (E.H.R.C.) the European Human Rights Committee declared the right of British parents to prevent school authorities for administering corporal punishment to their children.</p> <p>For a complete review see the REPEAL 43 COMMITTEE: Brief to Minister of Justice et al (Toronto, April, 1994) at Tab 4.</p>
<p>Child Pro-tection and Custody Disputes</p> <p>Arts. 5, 7 8, 9.1, 9.2, 14.2</p>	<p>Single mother addict placed new-born infant in state care; 12 mths. Later and rehabilitated mom wants child back; child is said to have bonded with foster parents</p>	<p>Tab 5 is a chart entitled "Judicial Entrenchment of the Bonding Principle" and discussion of the tactic of "possession" in custody litigation from <i>Wilson On Children and the Law</i>.</p>	<p>effect.</p>	<p>see the writings of J. Bowlby, A.Freud, A.J. Solnit, J. Goldstein and P.D. Steinhauer's, <i>The Least Detrimental Alternative: A Systematic Guide to Case Planning and Decision-Making for Children in Care</i> (Toronto: University of Toronto Press, 1991)</p>
				<p>cocaine. from <i>The Health of Canadian Children [-:] A CICH Profile, supra</i> at p. 99.</p>

<p>Education Exclusion</p> <p>Art. 3, 28, 29</p>	<p>dyslexic pupil is a behavioral problem, low self-esteem</p>	<p>Tab 7 is a Chart entitled "Guarantees of Educational Rights under Public Schools Acts" prepared by Yude Henteleff Q.C., for Chapter One of <i>Making the Most of the Law: Education and the Child With Learning Disabilities</i> (Ottawa: Learning Disabilities Association of Canada, 1993) at p 13. & the Feb. 15, 1995 Ont. C.a. decision of <i>Eaton v. Brant Cty, Bd. of Ed.</i></p>	<p>Child has a duty to attend school under sanction of quasi-criminal offense proceedings; but only corollary duty upon the state is that of accommodation free of charge.</p>	<p>in 1991 it was estimated that 534,430 children and youth between 0 and 19 years of age residing in households had at least one disability - 7.2% of all children in Canada. The same study reported the fact that the ste of a disability interfered with the child's attendance at a school. <small>from <i>The Health of Canada Children</i>[:] A CICH Profile, supra, at p. 151, 159</small></p>
<p>Education Expulsion</p> <p>Arts. 12, 28, 29, 40</p>	<p>for the 3rd time pupil is alleged to have used marijuana.</p>	<p>For e.g., see the Education Act, R.S.O. 1990, c. E. 2, ss.23 (3),(4),(6), at Tab 8</p>	<p>child is the subject of the proceeding and the one person who faces severe consequences but the child is not a party to the proceeding; no legislative provision for education for the expelled child.</p>	<p>One Canadian school board, the Scarborough Bd. of Education (Metro. Toronto) in 1994 pioneered and "expulsion for life zero tolerance" policy in respect of pupils in possession of prohibited weapons on school property.</p>
<p>Mental Health: Informal Voluntary patient in law & forced committal in fact.</p> <p>Arts.3,12, 25</p>	<p>13 yr. old child protests her parents' placement of her in a psychiatric facility.</p>	<p>Tab 12 is a Summary Chart of "committal legislation" across Canada; and a discussion of Ontario's recently proclaimed into force Consent to Treatment Act, 1992, S.O. 1992, c.31, as it impacts upon the child and this issue. <i>Parham v. J.R.</i>,99 U.S. 2493 (1979) represents traditional jurisprudence: the child as unable to make sound judgements and therefore the parent's substitute decision-making.</p>	<p>forced confinement of child without due process protections; forced treatment of the child without due process; arbitrary age assignment; no empirical justification for deception of information voluntary patient status; efficacy of forced mental health "treatment" for the unwilling youth; issue of reconciling the civil status of the child with his criminal law counterpart under the Young Offenders Act where a judicial disposition that directs treatment to be distinguished from "custody" requires the youth's consent..</p>	<p>as of date of preparation of this chart data as to the number of such "voluntary" mental health patients has not been obtained.</p> <p>Note:</p> <ul style="list-style-type: none"> - the suicide rate for young men 15 - 19 years has increased four-fold since 1960; - rate of suicide for young men is 6 times greater than for young women but teenage women are hospitalized for attempted suicide at a rate twice that of young men; - in 1991, 23 young men aged 15 -19 for every 100,000 committed suicide; among Indian youth 10 - 19 years of age during the 5-year period 1986-90, the average rate was 37 per 100,000, and when isolated for Indian males the rate is 54 per 100,000 <small>The Health of Canada's Children[:] A CICH Profile, supra at pp. 97,144.</small>

**A Sampling of Canadian Laws Affecting the Child's Civil Law Status
Measuring Up to the *Convention on the Rights of the Child*
REVISED ADDENDUM BRIEF INDEX**

Tab Item

Adoption:

ON WHAT BASIS CAN CANADA JUSTIFY THE DENIAL OF KNOWLEDGE OF ONE'S BIRTH IDENTITY?

1. decisions of first instance and on appeal: *Mario Albert Ramirez P. v. the Catholic Children's Aid Society of Metropolitan Toronto and Angelika K.* unrept. decision of the Ontario Prov. Div., September 21, 1994 *per* Nevins J., affmd. February 21, 1995 Ontario Gen.Div. **per** Jarvis J.
2. "Table of Provincial and Territorial Legislation Concerning the Adoptee's Knowledge of Origins".

Corporal Punishment

ON WHAT BASIS CAN CANADA JUSTIFY THE CONTINUED SANCTIONING OF CORPORAL PUNISHMENT?

3. Repeal 43 Committee: Brief to Minister of Justice *et al* (Toronto- April, 1994)

Child Protection, Custody Placement Decision-Making

WHY IN CANADA DOES AN ALLEGED OFFENDER RECEIVE A MORE IMMEDIATE HEARING AND DISPOSITION THAN A CHILD WHO IS THE SUBJECT OF STATE INTERVENTION?

4. See the Charts:
 - *Judicial Entrenchment of the "Bonding" Principle in "(j) Possession: Interim Relief, Primary Parent and Adoption"*,
 - *The Test of "Best Interests" in Canadian Jurisdictions* and "(e) Permanency Planning", from *Wilson On Children and the Law* (Toronto: Butterworths, 1994).

10 Krista Daley: *Outline Consultation Paper Regarding the Determination of Refugee Claims by Minors* (1994); Chantal Bernier, Special Advisor to the Chairperson, *Report to the Chairperson Regarding Consultation with Experts on Minor Claimants* (January 13, 1995)

Mental Health

WHY DOES A CONVICTED YOUNG OFFENDER RECEIVE BETTER PROTECTION AGAINST FORCED MENTAL HEALTH COMMITMENT "TREATMENT" THAN THE CHILD WHO HAS COMMITTED NO CRIME? WHAT IS THE EMPIRICAL JUSTIFICATION FOR FORCED MENTAL HEALTH CONFINEMENT OF THE CHILD WITHOUT PROCEDURAL DUE PROCESS PROTECTION? HOW DOES A PROCESS THAT LEADS TO FORCED CONFINEMENT OF A PERSON WITHOUT SAFEGUARDS FOR HEARING FROM THAT PERSON COMPLY WITH ARTICLE 12 OF THE *CONVENTION*?

11. Summary Chart of Canadian mental health "committal legislation" and a discussion of Ontario's recently proclaimed *Consent to Treatment Act, 1992*, S.O. 1992, c.31, as it impacts upon children.

[Home](#)

acknowledged.

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