

**LAW LIBRARY OF CONGRESS**

**CANADA**

**CHILDREN'S RIGHTS:  
INTERNATIONAL AND NATIONAL LAWS AND PRACTICES**

*Executive Summary*

*Canada has ratified the Convention on the Rights of the Child and the two optional protocols to it. Responsibility for implementation is split between the federal government and the provinces. Canada's ten provinces have nearly universal health insurance plans that cover virtually all children and maintain most social welfare agencies. Another provincial responsibility is education. Children receive tax-supported elementary and secondary education. Universities charge subsidized tuition. Minimum ages for employment are yet another provincial responsibility. On the federal level, there are many criminal laws designed to prevent child abuse. The number of related offenses and the maximum punishments for them have been greatly increased in recent years. In its national defense laws, the federal government now prohibits Canadian soldiers under the age of eighteen from being deployed in armed conflict. The federal government also created a new juvenile justice system in 2002 that gives the police and judges more options in handling cases of juveniles charged with criminal offenses than the previous law.*

**I. Introduction**

Canada is a constitutional monarchy which has a Parliament, composed of a Senate and House of Representatives, and ten provinces which have legislative assemblies. Since Canada's various Constitution Acts do not assign the subject of children to either level of government, it is essentially split, with each level covering children as part of the jurisdictions conferred upon them. Thus, for example, the provinces have enacted child labor laws in exercising their powers over most private sector employment within a province, and Parliament has prohibited child pornography in exercising its exclusive jurisdiction to enact criminal laws for the country.

In Canada, the provinces have established ages of majority for such purposes as determining when a child has the legal capacity to enter into contracts, is able to purchase restricted products, is free of parental control, and can exercise full civil rights. In Alberta, Ontario, Saskatchewan, Manitoba, Quebec, and Prince Edward Island the age of majority is eighteen, and in British Columbia, New Brunswick, Nunavut, Nova Scotia, and Newfoundland and Labrador the age of majority is nineteen.<sup>1</sup> Quebec's age of majority is set out in its Civil Code.<sup>2</sup> However, under federal laws, all persons eighteen and older are eligible to vote in federal elections and may be tried as adults regardless of which province or territory they live in. Thus, there is no one age of majority for all purposes of Canadian law.

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<sup>1</sup> Government of Canada, Canadian Embassy in France, *Age of Majority by Province or Territory* (2007), <http://www.dfait-maeci.gc.ca/canada-europa/france/canadaaz/agemajorite-en.asp> (last visited Aug. 10, 2007).

<sup>2</sup> C.C.Q. 153 (2007).

## II. Implementation of International Rights of the Child

Canada has ratified the Convention on the Rights of the Child,<sup>3</sup> the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict,<sup>4</sup> and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography.<sup>5</sup> Since Canadian constitutional law does not generally permit the federal government to legislate over matters that fall under provincial jurisdiction even for the purpose of implementing an international agreement, Canada makes reservations to this effect if implementation would require provincial cooperation. The federal government has had to work with the provinces in implementing aspects of the original convention dealing with such matters as education and health care. On the other hand, the conduct of war and criminal law are matters under federal jurisdiction. Thus, the federal government has been able to implement the Optional Protocols by amending its statutes that regulate national defense and create a national criminal code.

## III. Child Health and Social Welfare

In Canada, each province operates its own health insurance program. Virtually all residents are enrolled in these programs. Most of the programs are funded through tax revenues, but some provinces also place a special tax on employers. The federal government gives financial assistance to the provinces to help defray health care costs. When the single-payer systems were created in the 1960's, the federal government paid approximately fifty percent of the programs' costs. However, this percentage has declined to around twenty percent. The decrease has placed a strain on the provincial health care systems, which has resulted in longer waiting times for medical services. The current government has increased the federal contributions in an effort to preserve and improve the universal health care system. Under this system, patients can choose their own physicians. The vast majority of physicians bill the health insurance programs for their services and are reimbursed in accordance with schedules of fees. These physicians cannot engage in the practice of extra-billing or charging their patients separate additional fees for expedited services, but physicians can opt out of the system.

Because Canada has provincial health care plans, virtually all children have health insurance. Hospitals are mostly operated by municipalities and charitable organizations. The major cities have hospitals that are devoted to treating sick children. Canadians do not have to pay special fees to have their children treated at these hospitals.

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<sup>3</sup> The Convention on the Rights of the Child, with a Preamble and fifty-four articles, was adopted by the U.N. General Assembly Nov. 20, 1989, and entered into force Sept. 2, 1990. G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 28 I.L.M. 1448 (1989). For an online text, see the OHCHR Web site, <http://www.ohchr.org/english/law/crc.htm> (last visited July 23, 2007); it includes the 1995 amendment to art. 43, para. 2 (G.A. Res. 50/155 (Dec. 21, 1995)), which entered into force Nov. 18, 2002. For an in-depth analysis of Part I of the Convention (articles 1-41), see SHARON DETRICK, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (1999); see also *Convention on the Rights of the Child*, AMNESTY INTERNATIONAL USA, [http://www.amnestyusa.org/Children/Convention\\_on\\_the\\_Rights\\_of\\_the\\_Child/page.do?id=1101777&n1=3&n2=78&n3=1272](http://www.amnestyusa.org/Children/Convention_on_the_Rights_of_the_Child/page.do?id=1101777&n1=3&n2=78&n3=1272) (last visited July 24, 2007).

<sup>4</sup> The Child Soldiers Protocol, comprising a Preamble and thirteen articles, entered into force Feb. 12, 2002. G.A. Res. A/RES/54/263 of 25 May 2000. For an online text, see the UNHCHR Web site, <http://www.unhchr.ch/html/menu2/6/protocolchild.htm> (last visited July 23, 2007).

<sup>5</sup> The Sex Trafficking Protocol comprises a preamble and seventeen articles. G.A. Res. A/RES/54/263, May 25, 2000. It entered into force Jan. 18, 2002. For an online text, see the UNHCHR Web site, <http://www.unhchr.ch/html/menu2/dopchild.htm> (last visited July 23, 2007).

Statistics Canada reports that the infant mortality rate for children under the age of one year was 5.3 per 1,000 live births in 2004.<sup>6</sup>

#### IV. Education

Education in Canada is a provincial responsibility. The federal government does not have a federal department of education, but it does operate a limited number of schools on military bases and on Indian reservations.

Under Canada's original Constitution Act, 1867, the rights that previously existed respecting separate denominational schools were preserved.<sup>7</sup> Some of these rights differ from province to province and some of them have been expanded by subsequent legislation. At present, separate denominational and linguistic schools exist throughout much of Canada. In the largest cities and many other localities, there are separate Protestant and Catholic school boards. In practice, most non-Christians attend schools run by Protestant school boards in which religion is not taught. Because the Constitution Act guaranteed existing denominational rights, it does not confer on members of other religions the right to establish a tax-funded school board. However, provincial laws do allow for the establishment of private schools. Unlike the Protestant and Catholic school boards, these schools are not supported by taxes in proportion to the number of students enrolled in their elementary and secondary school programs. Many provinces also have separate English and French school boards. Thus, a bilingual city can have four separate school boards. Separate language schools generally exist where the numbers of students who wish to be enrolled in a minority language program are sufficient to sustain a separate school system.

Universities are also operated by the provinces. Canada does not have as extensive a system of private universities as in the United States. Tuition at universities within each province varies only slightly. Provinces have grant programs to assist university students. Most universities have a primary language of instruction, but a number offer courses in both official languages, including McGill University, the University of Ottawa, and the University of New Brunswick.

All students are entitled to virtually free elementary and secondary education in Canada. In fact, the Province of Ontario has recently enacted legislation to require students to remain in school until the age of eighteen.<sup>8</sup> Previously, children had been allowed to legally drop out of school upon reaching the age of sixteen. This initiative is part of a larger program that includes a Can\$1.3 billion (about US\$1.23 billion) Student Success Strategy to expand available programs. Ontario has also created 1,000 new skilled trades training spaces for vocational training.<sup>9</sup> The new requirement that children remain in school until the age of eighteen is enforceable with fines against parents who do not enroll their children in school. However, critics question whether the province will be able to force students to return to school if they decide to quit after reaching the age of sixteen.

Canada does not have an extensive system of vocational schools, but there are several institutes of higher education that emphasize job-related skills in major cities.

Some provincial laws respecting local secondary schools contain general language requiring school boards to address special needs. In Ontario, school boards are required to address the needs of "exceptional pupils."<sup>10</sup> More specific provisions are contained in the Ontarians with Disabilities Act.

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<sup>6</sup> Statistics Canada, *Infant Mortality, by Province and Territory*, <http://www40.statcan.ca/101/cst01/health21a.htm> (last visited August 7, 2007).

<sup>7</sup> Constitution Act, 1867, R.S.C. No. 5, s. 93 (Appendix 1985).

<sup>8</sup> Education Act, c. E-2, s. 21 (1990), as amended by 2006 S.O. c. 28, s. 5(1).

<sup>9</sup> Ontario, Ministry of Government Services, *McGinty Government Helps, Students Stay in School*, <http://ogov.newswire.ca/ontario/GPOE/2007/01/16/c6146.html?lmatch=%E2%8C%A9=e.html> (last visited Aug. 6, 2007).

<sup>10</sup> Education Act, R.S.O. c. E-2, s. 2 (1990).

This statute applies to schools, universities, and government and requires them to comply with barrier-free guidelines. The government is specifically required to consider as a barrier anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy, or a practice.<sup>11</sup> Schools and universities are not subject to this requirement, but as “scheduled organizations” they are required to consult with persons with disabilities and prepare annual accessibility plans. These plans must “address the identification, removal and prevention of barriers to persons with disabilities in the organization’s by-laws, if any, and in its policies, programs, practices and services.”<sup>12</sup> Accessibility plans must include a report on measures taken; the measures in place; a list of bylaws, policies, programs, practices, and services to be reviewed; and measures the organization intends to take in the coming year. Accessibility plans must be made available to the public. To help organizations in the preparation of their plans, the government is assigned the responsibility of preparing more detailed guidelines. In some cases, two or more organizations are allowed to prepare joint accessibility plans.

Ontario has passed a new law to replace the Ontarians with Disabilities Act which has not yet been brought into force.<sup>13</sup> This law will essentially extend many of the extant rules to the private sector.

Canada’s Constitution prohibits “cruel and unusual punishment.”<sup>14</sup> Whether this would apply to corporal punishment by teachers is not clear.<sup>15</sup> However, provincial school district associations have clearly banned corporal punishment. In Ontario, the guide to school district policies states as follows:

The use of corporal punishment in any form is strictly prohibited in the district. No student will be subject to the infliction of corporal punishment.

Corporal punishment is defined as the willful infliction of, or willfully causing the infliction of physical pain.

No teacher, administrator, other school personnel or school volunteer will subject a student to corporal punishment or condone the use of corporal punishment by any person under his/her supervision or control. Permission to administer corporal punishment will not be sought or accepted from any guardian/parent . . . .

A staff member is authorized to employ physical force when, in his/her professional judgment, the physical force is necessary to prevent a student from harming self, others or doing harm to district property. Physical force shall not be used to discipline or punish a student. The superintendent shall inform all staff members and volunteers of this policy.<sup>16</sup>

## V. Child Labor and Exploitation

In Canada, most contracts of employment in the public sector are covered by provincial labor laws. Each province has its own restrictions on child labor. The federal government also has enacted prohibitions on child labor, but these prohibitions only apply to work conducted in federal undertakings or in field that are governed by federal legislation such as aviation, broadcasting, and banking. Federal law does not generally supersede provincial law. Instead, each level of government regulates

<sup>11</sup> Ontarians With Disabilities Act, S.O. c. 32, s. 2.

<sup>12</sup> *Id.* S. 15.

<sup>13</sup> Accessibility for Ontarians with Disabilities Act, 2005 S.O. c. 11.

<sup>14</sup> Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Sched. B. s. 12 to the Canada Act, 1982, c. 11 (U.K.).

<sup>15</sup> Peter Hogg, *Constitutional Law of Canada*, 50-2 (1997).

<sup>16</sup> Ontario, *School District Policies, Code JGA*, [http://www.ontario.k12.or.us/District/NewDistrictPolicies/Section\\_J.html](http://www.ontario.k12.or.us/District/NewDistrictPolicies/Section_J.html) (last visited Aug. 7, 2007).

employment in fields within its jurisdiction. At the present time, the minimum age for employment extends from fourteen in Nova Scotia, Ontario, and Quebec to seventeen at the federal level and in the territories of the Northwest, Nunavut, and the Yukon.<sup>17</sup> Parliament and the provinces have also placed limitations on the type of work and the number of hours young people can be hired to perform. For example, the federal government has excluded certain categories of dangerous work, providing that any work performed must be unlikely to endanger health and safety; required all work to be outside school hours; and prohibited work between the hours of 11:00 p.m. and 6:00 a.m. for minors.<sup>18</sup> In the largest province of Ontario, minors may not be employed in logging operations until they are fifteen and may not be employed in factories until they are sixteen.<sup>19</sup> Employment in mines and on construction sites are also generally limited to sixteen and older, but employment in underground mines is generally limited to those at least eighteen years old.<sup>20</sup>

Parliament and the provinces also share responsibility for establishing minimum wages within their spheres of competence, but in this case, the federal government has aligned its rates with each province and territory in which a person subject to federal regulation is employed. The federal government does not have a special minimum wage for persons under the age of eighteen. Registered apprentices are exempt from the minimum wage provisions if they are paid in accordance with a schedule established for apprentices by their provincial government. Certain trainees may also be paid less than the prevailing minimum wage in their province of employment.<sup>21</sup> Ontario currently has a provincial minimum wage of Can\$8.00 per hour (about US\$7.60).<sup>22</sup> As of February 1, 2007, there is a special rate of \$Can7.50 per hour for students whose weekly hours do not exceed twenty-eight or who are employed during a school holiday.<sup>23</sup> Other exemptions for trainees are not limited to persons within a certain age group.

Throughout Canada, employees under the age of eighteen generally have the same rights as other workers to holidays, union representation, and overtime pay. Other labor standards also generally apply to all employees equally.

Canada has a Cadet Corps for persons between the ages of twelve and nineteen. Persons in the Cadet Corps are involved in physical training and community service.<sup>24</sup> Cadets are not eligible for deployment. Canada permits persons between the ages of sixteen and eighteen to enlist in the armed forces with the consent of a parent.<sup>25</sup> However, persons under the age of eighteen cannot be deployed to a theater of armed hostilities by the Canadian Forces.<sup>26</sup>

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<sup>17</sup> CANADIAN LABOUR LAW REPORTER, para. 5112 (C.C.H. Can 2007).

<sup>18</sup> Canada Labour Standards Regulations, C.R.C. c. 986, s. 10, as amended (1985).

<sup>19</sup> Industrial Establishments Regulation, R.R.O. No. 851 (1990).

<sup>20</sup> Mines and Mining Plants Regulation, R.R.O. No. 854, s. 8 (1990).

<sup>21</sup> Canada Labour Standards Regulations, C.R.C., c. 986, s. 20 (1978), as amended.

<sup>22</sup> Canadian Labour Law Reports, para. 6771 (C.C.H. Can. Para. 6771).

<sup>23</sup> *Id.*

<sup>24</sup> *Frequently Asked Questions (FAQs) - Cadest*, CADETS CANADA, Apr. 10, 2007, available at [http://www.cadets.dnd.ca/recruit/faq-cadet\\_e.asp](http://www.cadets.dnd.ca/recruit/faq-cadet_e.asp).

<sup>25</sup> United Nations Office of the High Commissioner for Human Rights, *Declarations and Reservations to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*; <http://www.unhcr.ch/html/menu2/6/crc/treaties/declare-opac.htm> (last visited Aug. 9, 2007).

<sup>26</sup> National Defence Act, R.S.C. c. N-5, s. 34, as amended by 2000 S.C., c. 13, s. 1.

## VI. Sex and Trafficking of Children

Canada's Criminal Code contains a number of offenses related to the sexual exploitation of or the trafficking in children. The most important of these offenses can be summarized as follows:

1. Sexual interference. Touching a child under the age of fourteen for a sexual purpose is punishable with a maximum sentence of ten years' imprisonment and a minimum sentence of fourteen days.<sup>27</sup>
2. Invitation to sexual touching. Inviting a child under the age of fourteen to engage in sexual touching carries the same penalties as sexual interference.<sup>28</sup>
3. Sexual exploitation. The offense of sexual exploitation extends the offenses of sexual interference and invitation to sexual touching to persons who are in a position of trust or authority over a child between the ages of fourteen and eighteen. The maximum and minimum sentences for sexual exploitation are the same as for sexual interference and sexual touching.<sup>29</sup>
4. Child pornography. Any person who makes, prints, publishes, or possesses child pornography for publication is liable to a maximum sentence of ten years' imprisonment and a minimum sentence of ninety days' imprisonment. Any person who transmits, distributes, sells, imports, or advertises child pornography or possesses child pornography for one of those purposes is liable to the same maximum and minimum punishments. Any person who possesses child pornography is liable to a maximum sentence of five years' imprisonment and a minimum of fourteen days' imprisonment. Any person who knowingly accesses child pornography is liable to the same maximum and minimum punishments.

The term "child pornography" includes not only pictures, films, and other visual representations, but also written material which counsels sexual activity with a person under the age of eighteen and audio recordings that describe sexual activity with a person under the age of eighteen. It is not a defense to a child pornography charge that the person believed the person depicted was eighteen or older, unless the accused took all reasonable steps to ensure the persons was of legal age and that he or she was not depicted as being under the age of eighteen.

In a controversial 2001 decision, the Supreme Court of Canada ruled that the country's child pornography laws were mostly constitutional, but they could not support the conviction of a person who had been found to have created visual and written material for his own private use.<sup>30</sup> Parliament later responded to this decision by enacting a law that states that no person can be convicted of child pornography if the act that is alleged to constitute the offense "does not pose an undue risk of harm to persons under the age of eighteen years."<sup>31</sup> The law also now provides that it is a question of law whether any written material or visual representation advocates or counsels sexual activity with a person under the age of eighteen that would be an offense under the Criminal Code.<sup>32</sup> These exceptions only apply to material that is not distributed.

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<sup>27</sup> Criminal Code, R.S.C. c. C-46 (1985) and c. 19, s. 1 (3d Supp. 1988), as amended by 2005 S.C. c. 32, s. 3.

<sup>28</sup> *Id.* S. 152.

<sup>29</sup> *Id.* S. 153.

<sup>30</sup> *R. v. Sharp*, [2001] 1 S.C.R. 45.

<sup>31</sup> Criminal Code, R.S.C. c. C-46, s. 163.1(6), as amended by 1993 S.C. c. 46, s. 2, c. 13, s. 5, and 2005 S.C. c. 32, s. 7.

<sup>32</sup> *Id.* S. 163.1(7).

5. Parent or Guardian Procuring Sexual Activity. Any parent or guardian who procures a person under the age of eighteen for prohibited sexual activity with another person is liable to a maximum sentence of five years' imprisonment and a minimum sentence of six months' imprisonment if the child is under the age of fourteen and a maximum sentence of two years' imprisonment and a minimum sentence of forty-five days' imprisonment if the child is between the ages of fourteen and eighteen.<sup>33</sup>
6. Householder Permitting Sexual Activity. A householder who knowingly permits his or her premises to be used by a minor for illegal sexual activities is liable to the same ranges of punishment as a parent or guardian who procures sexual activity for a child.<sup>34</sup>
7. Corrupting Children. The offense of corrupting children is very broadly defined. Under it, a person who "participates in adultery or sexual immorality or indulges in habitual drunkenness or any other form of vice, and thereby endangers the morals of [a] child or renders the home an unfit place for the child to be in" is liable to two years' imprisonment.<sup>35</sup>
8. Luring a child. Using a computer to lure a child or a person he or she believes is a child for an unlawful sexual activity is a relatively new offense that is punishable with up to five years' imprisonment. In order to be able to raise mistake as to age as a valid defense, a defendant must prove that he or she took reasonable steps to ascertain the age of the person communicated with.<sup>36</sup>
9. Abduction of person under fourteen. Abducting a child with the intent to deprive a parent or guardian of possession of that child is punishable with up to ten years imprisonment.<sup>37</sup>
10. Abduction in contravention of a custody order. Abduction of a child under the age of fourteen in contravention of a custody order is also punishable with a maximum sentence of ten years imprisonment.
11. Abduction. A parent who abducts a child to prevent a parent or guardian to have possession of him or her is punishable with a maximum sentence of ten years imprisonment even if the child is not the subject of a custody order.<sup>38</sup>
12. Procuring. Any person who lives wholly or in part on the avails of a prostitute under the age of eighteen is liable to a maximum sentence of fourteen years imprisonment and a minimum sentence of two years imprisonment. Any person who uses violence, intimidation, or coercion for that purpose is liable to a minimum sentence of five years imprisonment. Any person who attempts to procure a prostitute under the age of eighteen is liable to a maximum sentence of five years imprisonment and a minimum sentence of six months imprisonment.<sup>39</sup>
13. Removing a Child from Canada. Removing children from Canada for certain illegal sexual purposes is an offense that is punishable with up to five years imprisonment.<sup>40</sup>

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<sup>33</sup> *Id.* S. 170.

<sup>34</sup> *Id.* S. 171.

<sup>35</sup> *Id.* S. 172

<sup>36</sup> 2002 S.C. c. 13, s. 8.

<sup>37</sup> Criminal Code, R.S.C. c. C-46, s. 281 (1985).

<sup>38</sup> *Id.* S. 283.

<sup>39</sup> *Id.* S. 212.

<sup>40</sup> *Id.* S. 273.3

14. **Trafficking.** Canada has strict laws prohibiting the trafficking in persons of all ages. Under the Criminal Code, any person who “recruits, transports, transfers, receives, holds, conceals or harbours a person...for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offense and is liable to imprisonment for life if they kidnap, commit an aggravated assault, or aggravated sexual assault against, or cause death to, the victim during the commission of the offense [and] to imprisonment for up to fourteen years in any other case.”<sup>41</sup> Judges may exclude members of the public from the courtroom where it is in the proper administration of justice, which includes ensuring that witnesses under the age of eighteen are safeguarded.<sup>42</sup>

In Canada, minimum sentences are fairly rare. The fact that so many of the offenses described above do carry minimum sentences indicates that Parliament has taken extraordinary steps to protect children. In addition to creating a number of offenses that are designed specifically to punish persons who exploit or abuse minors, Parliament has also provided that abusing a person under the age of eighteen is to be viewed as an aggravating factor by judges in sentencing persons convicted of offenses against children.<sup>43</sup>

## VII. Juvenile Justice

In 2002, Parliament enacted a Youth Criminal Justice Act<sup>44</sup> to replace the Young Offenders Act.<sup>45</sup> The Preamble to this statute signals that it was intended to create a far more lenient system for juvenile justice by declaring that

Canadian society should have a youth criminal justice system that commands respect, takes into account the interests of victims, fosters responsibility and ensures accountability through meaningful consequences and effective rehabilitation and reintegration, and that reserves its most serious intervention for the most serious crimes and reduces the over-reliance on incarceration for non-violent young persons.<sup>46</sup>

The Preamble also notes that Canada is a party to the United Nations Convention on the Rights of the Child and that young persons have rights and freedoms, including those set out in the Canadian Charter of Rights and Freedoms and have “special guarantees of their rights and freedoms. The Declaration of Principle then contains the following statements:

The criminal justice system for young persons must be separate and apart from that of adults and emphasize: 1) rehabilitation and reintegration; 2) fair and proportionate accountability; 3) enhanced personal protection to ensure that young persons are treated fairly and that their rights, including their rights to privacy, are protected.<sup>47</sup>

Special considerations apply in respect of proceedings against young persons and in particular ... young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the process, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms.<sup>48</sup>

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<sup>41</sup> *Id.* S. 279.01.

<sup>42</sup> *Id.* S. 486.

<sup>43</sup> *Id.* S. 718.2(a)(ii.1).

<sup>44</sup> Youth Criminal Justice Act, S.C. 2002, c. 1.

<sup>45</sup> Young Offenders Act, R.S.C. c. Y-1 (1985).

<sup>46</sup> Youth Criminal Justice Act, S.C. 2000, c. 1, Preamble.

<sup>47</sup> *Id.* S. 3.

<sup>48</sup> *Id.*

Young persons are thus guaranteed the right to be presumed innocent and to prompt notification of charges brought against them. The Act also has provisions for prompt trials and, in this connection, recognizes that young persons have a different perception of time.<sup>49</sup> The applicability of the Charter of Rights and Freedoms to youth criminal justice means that they are guaranteed the right against self-incrimination and the right to use French or English in legal proceedings.<sup>50</sup> The right to a fair trial also guarantees young persons the right to have an interpreter.<sup>51</sup>

The Youth Criminal Justice Act encourages the use of extrajudicial measures by the police and the courts to address youth crime. Extrajudicial measures are designed to be timely, to repair harm, to encourage families to become involved, to give victims an opportunity to participate, and to respect the right and freedoms of young persons.<sup>52</sup> The Act also provides for the imposition of extrajudicial sanctions such as placing young offenders in special programs.<sup>53</sup>

In Canada's youth courts, defendants have the right to counsel. Defendants found guilty of an offense are liable to a youth sentence if the judge finds that all the alternatives allowed for by the Youth Criminal Justice Act are inappropriate. Judges must consider pre-sentence reports. The maximum sentence a juvenile under the age of eighteen can receive for one crime is two years and the maximum sentence for multiple crimes is three years.<sup>54</sup> However, for first degree murder, a juvenile can be sentenced to up to ten years in custody, and for second degree murder, he or she may be sentenced to up to seven years in custody.<sup>55</sup> Also, for certain violent offenses, a youth can be sentenced to an adult sentence of more than two years in custody if the judge in the case finds that a youth sentence would not be sufficient to hold a young person accountable for his or her behavior.<sup>56</sup>

The Youth Criminal Justice Act contains protections for the privacy of young persons. Section 110 of the Act generally prohibits the publication of the names of young persons or information respecting them, except where they have been convicted of certain very serious offenses or have been given an adult sentence.<sup>57</sup> Exceptions are allowed to identify young persons who may be a danger to others or for the purpose of apprehending a young person.<sup>58</sup>

### VIII. Concluding Remarks

In 2003, the United Nations Committee on the Rights of the Child concluded its Thirty-Fourth Session by adopting reports on Canada and several other countries. The Committee stated that it "was encouraged by the numerous initiatives undertaken by" Canada. The Committee praised Canada's National Action Plan for Children and made only a few recommendations. Among these were that the federal government work more closely with the provinces on legislation and policy, prohibit reasonable force in the disciplining of children, and offer more assistance for child care. The Committee was also concerned with the relatively high rate of suicide among Canadian youths, particularly in aboriginal

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<sup>49</sup> *Id.*

<sup>50</sup> Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Sched. B. s. 12 to the Canada Act, 1982, c. 11, §§ 11(c) & 19 (U.K.).

<sup>51</sup> *Id.*

<sup>52</sup> Youth Criminal Justice Act, S.C. 2000, S. 5.

<sup>53</sup> *Id.* S. 6.

<sup>54</sup> *Id.* S. 42(14).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* S. 72

<sup>57</sup> *Id.* S. 110.

<sup>58</sup> *Id.*

communities. To address this problem, the Committee recommended improvements in the quality of education. The fact that Canadian law did not come under more extensive scrutiny attests to the high level of regard for and adherence to the rights of children in Canada.<sup>59</sup>

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<sup>59</sup> Press Release, United Nations, Committee on Rights of Child Concludes Thirty-Fourth Session (Mar. 10, 2003), available at <http://www.un.org/News/Press/docs/2003/hr4698.doc.htm>.