

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)**

BETWEEN:

J.Z.S.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

and

**ATTORNEY GENERAL OF CANADA,
ATTORNEY GENERAL OF MANITOBA,
ATTORNEY GENERAL OF ONTARIO,
ATTORNEY GENERAL OF ALBERTA,
ATTORNEY GENERAL OF QUEBEC, and
JUSTICE FOR CHILDREN AND YOUTH**

Interveners

**FACTUM OF THE INTERVENERS
JUSTICE FOR CHILDREN AND YOUTH**
Pursuant to Rule 42 of the Rules of the Supreme Court of Canada

Mary Birdsell & Andrea Gatti
Justice for Children and Youth
1203 – 415 Yonge Street
Toronto, ON M5B 2E7
Tel: 416-920-1633
Fax: 416-920-5855
Email: birdsem@lao.on.ca
Email: gattia@lao.on.ca
Counsel for the Interveners

Chantal Tie
South Ottawa Community Legal Services
1355 rue Bank Street, Suite/Piece 406
Ottawa, ON K1H 8K7
Tel: 613-733-0140
Fax: 613-733-0401
Email: tiec@lao.on.ca
Agent for the Interveners

Christopher W.A. Brennan
Barrister and Solicitor
1027 Pandora Avenue
Victoria, British Columbia
V8V 3P6
Tel: 250-388-9024
Fax: 250-388-9060
Email: chrisbrennan@shaw.ca
Counsel for the Appellant

Mary T. Ainslie
Attorney General of British Columbia
6th Floor, 865 Hornby Street
Vancouver, British Columbia
V6Z 2G3
Tel: (604) 660-1126
Fax: (604) 660-1133
Counsel for the Respondent

Brian A. Crane, Q.C.
Gowling LaFleur Henderson LLP
Suite 2600, Box 466, Station D
160 Elgin Street
Ottawa, Ontario
K1P 1C3
Tel: 613-233-1781
Fax: 613-563-9869
Email: brian.crane@gowlings.com
Agent for the Appellant

Robert E. Houston, Q.C.
Burke-Robertson
70 Gloucester Street
Ottawa, Ontario
K2P 0A2
Tel: 613-566-205
Fax: 613-235-4430
Agent for the Respondent

Henry S. Brown, Q.C.
Gowling LaFleur Henderson LLP
Suite 1161, Bank of Canada, East
160 Elgin Street
Ottawa, Ontario
K1P 1C3
Tel: 613-233-1781
Fax: 613-788-3433
Email: henry.brown@gowlings.com
**Agent for the Attorney General of
Manitoba**

Robert J. Frater
Attorney General of Canada
234 Wellington Street
Ottawa, Ontario
K1A 0H8
Tel: 613-957-4763
Fax: 613-954-1290
Email: Robert.frater@justice.gc.ca
**Agent for the Attorney General of
Canada**

Pierre Landry

Noël & Associés
111 Champlain Street
Gatineau, Québec
J8X 3R1

Tel. 819-771-7393

Fax: 819-771-5387

Email: p.landry@noelassocies.com

**Agent for the Attorney General of
Québec**

Brian A. Crane, Q.C.

Gowling LaFleur Henderson LLP
Suite 2600, Box 466, Station D
160 Elgin Street
Ottawa, Ontario
K1P 1C3

Tel: 613-233-1781

Fax: 613-563-9869

Email: brian.crane@gowlings.com

**Agent for the Attorney General of
Alberta**

Robert E. Houston, Q.C.

Burke-Robertson
70 Gloucester Street
Ottawa, Ontario
K2P 0A2

Tel: 613-566-2058

Fax: 613-235-4430

Email: rhouston@burkerobertson.com

**Agent for the Attorney General of
Ontario**

TABLE OF CONTENTS

	Page No.
PART I - STATEMENT OF FACT	1
PART II - QUESTIONS IN ISSUE	1
PART III - STATEMENT OF ARGUMENT	2
Overview	2
Legislative History	3
Contextual Analysis	3
Fair Process	4
Child Witnesses - Equality	5
- Procedural Supports	6
International Law Obligations	8
PART IV - COSTS	10
PART V - NATURE OF ORDER SOUGHT	10
PART VI - TABLE OF AUTHORITIES	12
PART VII - RELEVANT LEGISLATIVE PROVISIONS	14

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)**

BETWEEN:

J.Z.S.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

and

**ATTORNEY GENERAL OF CANADA,
ATTORNEY GENERAL OF MANITOBA,
ATTORNEY GENERAL OF ONTARIO,
ATTORNEY GENERAL OF ALBERTA,
ATTORNEY GENERAL OF QUEBEC, and
JUSTICE FOR CHILDREN AND YOUTH**

Interveners

**FACTUM OF THE INTERVENER
JUSTICE FOR CHILDREN AND YOUTH**

PART I – STATEMENT OF FACT

1. JFCY relies upon the facts as presented by the Appellant and Respondent and where the facts are in dispute, JFCY takes no position.

PART II - POINTS IN ISSUE

2. JFCY addresses the following constitutional questions:
 - (i) Does s. 486.2 of the *Criminal Code*, R.S.C. 1985, c. C-46 infringe s. 7 or s.11(d) of the *Charter of Rights and Freedoms*?

- (ii) Does s. 16.1 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5 infringe s. 7 or s.11(d) of the *Charter of Rights and Freedoms*?
3. JFCY agrees with the Respondent and takes the position that neither s. 486.2 of the *Criminal Code*, nor s. 16.1 of the *Canada Evidence Act* infringe s. 7 or s.11(d) of the *Charter of Rights and Freedoms*.

PART III – STATEMENT OF ARGUMENT

Overview

4. Section 486.2 of the *Criminal Code* (“CC”) provides for a child witness to testify from outside the courtroom or with a screen upon a simple request to do so, unless the judge or justice is of the opinion that doing so would interfere with the proper administration of justice. Although the screen or the out of room testimony protects the witness from seeing the accused, but the accused, counsel and the justice or judge must be able to see the witness.
5. Section 16.1 of the *Canada Evidence Act* (“CEA”) provides that a child witness (under 14 years old) is presumed competent to testify, and will be able to do so on a promise to tell the truth.
6. These provisions create fairness in the evidentiary process by ensuring that children have a voice and may participate as witnesses in the criminal justice process in a meaningful way.
7. JFCY argues that a contextual analysis of the evidentiary sections at issue demonstrates that s 486.2 of the *CC* and s.16.1 of the *CEA* (together “Bill C-2 provisions”) do not inhibit the fairness of the trial process; rather, they enhance fairness by improving the truth-seeking function. The contextual analysis submitted has three aspects:
 - i. Fair Process - The legal principles regarding fair process demand that victims be allowed to participate in the criminal justice process. As long as

there are child victims of crime and children who witness crimes, Canada must allow their meaningful participation in court. To do so enhances the truth-finding function of the trial.

- ii. Child Witness: Equality and Procedural Supports - Child witnesses are distinct in the justice system. They are different from adult witnesses and are particularly vulnerable. To establish substantive equality children must receive different treatment. The special supports for children in the Bill C-2 provisions are consistent with a respectful and equality-based approach to children as seen in some other areas of domestic law.
- iii. Canada's International Law Obligations - The approach of the special supports for receiving children's testimony is consistent with Canada's international law obligations.

Legislative History

8. JFCY adopts the submissions of the Respondent in paragraphs 31-41 and 64-72 of its factum regarding the history of legislative changes resulting in the provisions at issue in this case; including jurisprudence and social science regarding the historical disadvantage and negative stereotypes to which child witnesses have been subject.

Contextual Analysis

9. This Court has been clear that meaningful constitutional analysis can only be undertaken with due regard to the broader political, social and historical context; and that the value of a right or freedom may differ depending on the context.¹
10. JFCY submits that the *Charter* arguments in this case must be considered in the context of the experience of child victims and witnesses and the human rights of children in domestic and international law and norms.
11. The Bill C-2 provisions acknowledge children's human rights as they enhance their right to be heard and appropriately accommodate the developmental needs of young

¹ *R. v. Seaboyer*, [1991] 2 S.C.R. 577 at 603 and 647. [*Seaboyer*]

witnesses in the criminal justice system, while maintaining the necessary safeguards of a fair trial and the *Charter* rights of accused persons.

I. Fair Process

12. Importantly, Madame Justice L'Hereux Dubé in *L(DO)* noted that “[t]he modern trend [in the law of evidence]... has been to admit all relevant and probative evidence and allow the trier of fact to decide the weight to be given to that evidence... . A just result is best achieved when the decision-makers have all relevant and probative information before them.”² The Bill C-2 provisions reflect this trend.

13. This Court has made clear that the principles of fundamental justice reflect a spectrum of interests...”, and thus the need to balance the accused’s interests with the interests of society. The criminal justice system must be “...both fair to the accused and sensitive to the needs of those who participate as witnesses.”³

14. The legal principles regarding the fairness of the trial process in light of testimonial supports articulated in *R. v. Levogiannis*⁴ and *L(DO)* remain unchanged. As this Court stated in *Levogiannis* and *L(DO)*, “the goal of the court process is truth seeking. Evidence must be given in a way most favourable to eliciting the truth.”⁵ JFCY adopts the Respondent’s submissions regarding the applicability of the reasoning in *Levogiannis* and *L(DO)* to this case. While the presumption has changed, the residual discretion continues to rest with the trial judge, enabling the vigilant protection of a fair trial.

15. The fact that the Bill C-2 provisions create presumptions that are rebuttable appropriately respects the child witness’ rights while empowering judges to ensure a fair trial for the accused in all the circumstances of each particular case.

² [1993] 4 S.C.R. 419 at 454-455 [*L(DO)*].

³ *L(DO)* at 453, citing *R. v. B.(K.G.)*, [1993] 1 S.C.R. 740 and *Seaboyer* at 603-4 and 622.

⁴ [1993] 4 S.C.R. 475 [*Levogiannis*].

⁵ *Levogiannis* at 483.

16. In addition, there has been an increasing recognition of the impact of the criminal justice system on victims, with the corresponding evolution of processes such as victim impact statements and the victim's right to information. As a society, our understanding of children and of their victimization has matured.
17. Any witness can be truthful and invaluable to the trial process; any witness can display frailty or mislead the court. Assumptions about credibility based on age or because a witness promised, affirmed, or pledged an oath to tell the truth are discriminatory and do not enlighten fact-finders. The adversarial system is responsible for revealing and testing truth.

II. Child Witnesses

a) Equality

18. This Court has stated that the *Charter* and the rights it guarantees are inextricably linked to the concept of human dignity.⁶
19. In addition to recognizing children as a vulnerable group in society deserving of protection from harm⁷, this Court has recognized that “[c]hildren require special treatment to facilitate the attainment of truth in a judicial proceeding in which they are involved.”⁸ Child witnesses are distinct in the justice system not because their testimony is likely to be less reliable or less probative but because of:
- a. their developmental stage of maturity;
 - b. their enhanced emotional, psychological and physical vulnerabilities;
 - c. their dependence on adults and the inherent power imbalance;
 - d. their level of vocabulary and limited ability to articulate abstract concepts; and
 - e. their lack of experience in the world – in particular, their lack of experience in formal adult settings like a court room.⁹

⁶ *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307 at para.76.

⁷ *R. v. Sharpe*, [2001] 1 S.C.R. 45 at paras. 169-175 [*Sharpe*].

⁸ *L(DO)* at 446-447; see also *Levogiannis* at 483-484.

⁹ *L(DO)* at 440-441; Bala, N. A. Evans, E. Bala, *Hearing Voices of Children in Canada's Criminal Justice System: Recognizing Capacity and Facilitating Testimony*, paper presented at the 5th World Congress on Family Law & Children's Rights, August 25, 2009 (Session 5.1) – see also accompanying research [*Voices*].

20. In recognition of the distinct experience that children have as witnesses in court and “a growing understanding of the degree to which the court system inhibits rather than encourages children to recount what they have witnessed,”¹⁰ this Court acknowledged in *Levogiannis* that “... the court process [has often] failed children, especially those who have been victims of abuse, who are then subjected to further trauma as participants in the judicial process.” The Court went on to confirm this Court’s view that child witnesses may have to be treated differently from adults when testifying in court.¹¹
21. JFCY submits that the Bill C-2 provisions recognize the equality-seeking requirement for differential treatment and thereby protect the distinct vulnerabilities of child witnesses and respect the inherent dignity of children.

b) Procedural Supports

22. Making modifications to the justice system that create procedural supports, such as allowing the use of screens, or testimony based on a promise to tell the truth, is consistent with accepted practice in other justice contexts and is an acknowledgement of the diversity of Canadian society. Modifications are made in order to recognize and protect the unique vulnerabilities, power imbalances, and dependencies inherent in being a child.
23. The Bill C-2 provisions provide support to child witnesses that are ameliorative and make the full and candid presentation of their evidence possible while protecting the trial process.

¹⁰ Wilson, J., *Wilson on Children and the Law*, looseleaf (Markham, ON: LexisNexis, 1994) para 6.46 - see the notes for a canvass of social science evidence [*Wilson*].

¹¹ *Levongiannis* at 484 citing *R. v. B.(K.G.)*, [1993] 1 S.C.R. 740; *R. v. B.(G.)*, [1990] 2 S.C.R. 30 at 54; *R. v. W.(R.)*, [1992] 2 S.C.R. 122 at 133.

24. Social science evidence supports the notion that providing the testimonial supports in s. 486.2 *CC* improves the young witness' abilities to give a full and candid account of their evidence and hence enhances justice for the accused as well as the witness.¹²
25. When testifying in court, especially as victims, young people experience greater levels of anxiety and emotional distress than adults.¹³ This is one important reason why child witnesses require different treatment than adults in the court room setting.¹⁴
26. The testimonial supports for children do not interfere with the accused's right to make full answer and defence. In particular, the accused maintains the opportunity to test the Crown's evidence through cross-examination. Nor do the supports lessen the Crown's obligation to prove their case beyond a reasonable doubt, and thus, does not violate section 7 or section 11(d) of the *Charter*.
27. There is no evidence that a promise to tell the truth, as provided for by s. 16.1 *CEA*, is less forceful than an affirmation or an oath in encouraging a witness to be truthful. Truthfulness may be encouraged by promises, but is tested by examination, cross-examination and findings of credibility.¹⁵
28. A promise to tell the truth does not involve a different moral standard from an affirmation or an oath. It merely invokes truth-telling in words a child can understand. Courts have recognized that there is no qualitative difference between an oath, an affirmation and a promise.¹⁶ A promise to tell the truth is merely communication adapted to the developmental level of a child witness.

¹² *Voices*; Submissions to the Standing Committee on Justice by Pamela Hurley, Director, Centre for Children and Families in the Justice System, April 5, 2005; Submissions to the Standing Committee on Justice by Professor Nicholas Bala, March 24, 2005; Canada. Committee on Sexual Offences Against Children and Youths. *Sexual Offences Against Children: Report of the Committee on Sexual Offences Against Children and Youths* (the "Badgely Report"), vol.1 Ottawa, 1984.

¹³ *Wilson* at para. 6.46.

¹⁴ *Levogiannis* at 484.

¹⁵ *Voices* at 6-7; See also para. 29 and fn 7.

¹⁶ *R. v. D. (R.R.)* (1989), 47 C.C.C.(3d) 97 (Sask C.A.) at 103-104; *R. v. McGovern* (1993), 82 C.C.C. (3d) 301 (Man. C.A.), QL paras. 18-19, 21.

29. The Child Witness Project found that a child who promises to tell the truth was more likely to tell the truth. On the other hand, there was no correlation between “correctly” answering the questions in the competency inquiry, mandated under the previous regime, and the likelihood the child witness would tell the truth.¹⁷

III. Canada’s International Law Obligations

30. This Court has held that Canadian law must be interpreted in a manner consistent with Canada’s international human rights obligations,¹⁸ and that international law is evidence of the principles of fundamental justice.¹⁹
31. This Court has increasingly recognized the importance and applicability of the UN *Convention on the Rights of the Child* (“*Convention*”) in other contexts where children’s rights are affected.²⁰ In the context of this case, the *Convention* provides minimum standards for children in Canada as it is incorporated by reference in Bill C-2.²¹
32. As signatory to and proponent of the *Convention*, Canada has undertaken to ensure both rights and protections for children, based on their status as human beings and on their vulnerability.
33. While participatory rights are a bedrock of the *Convention*, it also requires that children be given special care and assistance, including special safeguards.²² The Preamble to the *Convention* states that “the child, by reason of his physical and

¹⁷ *R. v. Persaud*, [2007] O.J. No. 432 at paras. 21-25.

¹⁸ *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76 at para. 32; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 1 S.C.R. 817 at para. 70-71 [*Baker*].

¹⁹ *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 at para. 60.

²⁰ *Baker*, at para. 69; *Sharpe*, at para. 177-178, 196; *Winnipeg Child and Family Services v. K.L.W.*, [2000] 2 S.C.R. 519 at para. 7-8.

²¹ *An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act*, 1st Session, 40th Parl. 2007 (assented to 28 February 2008).

²² *Convention on the Rights of the Child*, 20 November 1989, 3 U.N.T.S. 1577, Can. T.S. 1992/3, Preamble [*Convention*].

mental immaturity, needs special safeguards and care, including appropriate legal protection.”

34. Article 3 of the *Convention* provides that in all actions concerning children by courts of law, the “best interests of the child shall be a primary consideration.” Importantly, Article 12 requires that:

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity ... the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child ... in a manner consistent with the procedural rules of national law.”

35. Further, Article 19 requires State Parties to protect children from mistreatment, by providing the necessary supports when children are involved in judicial proceedings.²³

36. The *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (“*Declaration*”)²⁴ is an international instrument that articulates the approach of signatories to all victims of crime, regardless of age. Article 6 of the *Declaration* states that “The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: ...

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as

²³ *Convention*, Articles 3, 12, 19.

²⁴ UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* : resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/34.

well as that of their families and witnesses on their behalf, from intimidation and retaliation.

37. The importance of the dignity of the child in respect of Canada's obligation in international law was acknowledged by the Senate Human Rights Committee:

Ultimately, ensuring the promotion of and respect for children's rights strengthens recognition of children as individuals ... By enhancing the dignity of a child, we also enhance their acceptance of their role as a citizen with both rights and responsibilities.²⁵

38. JFCY submits that, in this context, Canada has lived up to its constitutional and international human rights obligations to its child witnesses and victims by enacting Bill C-2. Canada has given safe voice to children who have something relevant to contribute to a trial. And, they are reminded to tell the truth in words they understand. These gains for the equality and dignity of children caught up in a judicial process do not come at the cost of a fair trial. Rather, justice is better served when all with a relevant story to tell are able to tell it in the fullest, safest, and most candid way.

PART IV- COSTS

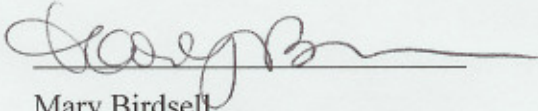
39. The Intervener makes no submissions as to costs.

PART V – NATURE OF ORDER SOUGHT

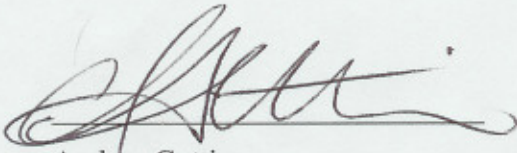
40. JFCY respectfully requests that the appeal be dismissed
41. JFCY requests permission to present oral argument.

²⁵ Canada. Standing Senate Committee on Human Rights. *Children: The Silenced Citizens, Effective Implementation of Canada's International Obligations with respect to the Rights of Children, Final Report of the Senate Standing Committee on Human Rights* (Ottawa: Senate Committees Directorate, 2007) at 30.

All of which is respectfully submitted this 15th day of December, 2009.

A handwritten signature in cursive script, appearing to read 'Mary Birdsell', written over a horizontal line.

Mary Birdsell
Justice for Children and Youth

A handwritten signature in cursive script, appearing to read 'Andrea Gatti', written over a horizontal line.

Andrea Gatti
Justice for Children and Youth

PART VI – TABLE OF AUTHORITIES

CASES	Paragraph # and Book of Authority
<i>Baker v. Canada (Minister of Citizenship and Immigration)</i> , [1999] 1 S.C.R. 817	30, 31
<i>Blencoe v. British Columbia (Human Rights Commission)</i> , [2000] 2 S.C.R. 307	18
<i>Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)</i> , [2004] 1 S.C.R. 76	30
<i>R. v. B.(G.)</i> , [1990] 2 S.C.R. 30	20
<i>R. v. B.(K.G.)</i> , [1993] 1 S.C.R. 740	13, 20 Respondent's Authorities, Tab 3
<i>R. v. D. (R.R.)</i> (1989), 47 C.C.C.(3d) 97 (Sask C.A.)	28
<i>R. v. L.(D.O.)</i> , [1993] 4 S.C.R. 419	12, 13, 14, 19, 20
<i>R. v. Levogiannis</i> , [1993] 4 S.C.R. 475	14, 19, 20, 25
<i>R. v. McGovern</i> (1993), 82 C.C.C. (3d) 301 (Man. C.A.)	28
<i>R. v. Persaud</i> , [2007] O.J. No. 432	29
<i>R. v. Seaboyer</i> , [1991] 2 S.C.R. 577	11, 13
<i>R. v. Sharpe</i> , [2001] 1 S.C.R. 45	19, 31
<i>R. v. W.(R.)</i> , [1992] 2 S.C.R. 122	20
<i>Suresh v. Canada (Minister of Citizenship and Immigration)</i> , [2002] 1 S.C.R.	30
<i>Winnipeg Child and Family Services v. K.L.W.</i> , [2000] 2 S.C.R. 519	31

LEGISLATION	
Bill C-2, <i>An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act</i> , 1 st Session, 40 th Parl. 2007 (assented to 28 February 2008)	31 Appellant's Authorities, Tab21
United Nations <i>Convention on the Rights of the Child</i> , 20 November 1989, 3 U.N.T.S. 1577, Can. T.S. 1992/3 , preamble. [<i>Convention</i>]	32, 34
UN General Assembly, <i>Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power : resolution / adopted by the General Assembly</i> , 29 November 1985, A/RES/40/34.	35
OTHER MATERIAL	
Bala, N. A. Evans, E. Bala, <i>Hearing Voices of Children in Canada's Criminal Justice System: Recognizing Capacity and facilitating Testimony</i> , paper presented at the 5 th World Congress on Family Law & Children's Rights, August 25, 2009 (Session 5.1) cited with permission from the author	19, 24, 26 Respondent's Authorities, Tab 32
Canada. Committee on Sexual Offences Against Children and Youths. <i>Sexual Offences Against Children: Report of the Committee on Sexual Offences Against Children and Youths</i> , vol.1 (Ottawa, 1984) (the "Badgely Report")	24 Respondent's Authorities, Tab 31
Canada. Standing Senate Committee on Human Rights. <i>Children: The Silenced Citizens, Effective Implementation of Canada's International Obligations with respect to the Rights of Children, Final Report of the Senate Standing Committee on Human Rights</i> (Ottawa: Senate Committees Directorate, 2007)	36
Submissions to the Standing Committee on Justice by Pamela Hurley, Director, Centre for Children and Families in the Justice System, April 5, 2005	24 Respondent's Authorities, Tab 26
Submissions to the Standing Committee on Justice by Professor Nicholas Bala, March 24, 2005	24 Respondent's Authorities, Tab 25
Wilson, J., <i>Wilson on Children and the Law</i> , looseleaf (Markham, ON: LexisNexis, 1994)	20, 25

PART VII – RELEVANT LEGISLATIVE PROVISIONS

Convention on the Rights of the Child
Adopted and opened for signature, ratification and
accession by General Assembly resolution 44/25 of 20 November
1989
Entry into force 2 September 1990, in accordance with
article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of

the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

**Declaration of Basic Principles of Justice for Victims of
Crime and Abuse of Power**

**Adopted by General Assembly resolution 40/34 of 29
November 1985**

A. Victims of crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.
3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
 - (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
 - (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
 - (c) Providing proper assistance to victims throughout the legal process;
 - (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.